

Friday, August 31, 2007

Why do we have criminal laws?

Bill of Rights. (From the public domain.) Why do we have criminal laws? To provide power, prestige and money to police, prosecutors, judges, criminal defense lawyers, government contractors, and everyone else earning dollars off of the criminal justice system? To enable the rulers to maintain power, fear and coercion over the ruled, rather than making ours a government run by the consent of the governed? To make people run to the police or to swear out a criminal warrant anytime someone looks cross-eyed at them? To maintain the only society we have known since birth, rather than taking the risk of a better society? To avoid telling friends, family members and acquaintances "No, it is premature and unnecessary to call the police at this moment; we have a chance of defusing, diluting, and solving the conflict ourselves at this time, or just avoiding or leaving it"? As my friend and mentor Jun Yasuda says: "Why is there a prison here? Five hundred years ago there was none. There were only Native Americans living in peace. They had reverence for each other. Now we fear each other. I am here to help people stop fearing each other, and to trust. We need to change the way we think. Putting people in cages is not a solution." As I say, let's not fatten the criminal code. So long as the government continues to deviate from focusing on fairly and effectively prosecuting rape, robbery, and murder -- by instead adding too much focus on prosecuting gambling, prostitution, drug crimes, and a whole host of other less serious crimes -- I will continue to have less confidence in the criminal justice system than if it were otherwise. As is perhaps a part of my unofficial job description in life, I created a mini-firestorm (from two responders, in this instance) recently when I provided some practical suggestions to a listserv member seeking some procedural pointers in a peeping tom civil litigation case, where the cause of action was rather irrelevant to the original inquiry and the guts of my response. I premised my listserv reply as follows: "An irony about my answering your message is that in such a case, I probably only be willing to represent the alleged peeping tom, in part as a visceral reaction to the criminalizing of such behavior - <http://markskatz.com/MarylandArrestLawyers.htm>" Such a comment from me as mild as this -- mild for me at least -- met with the following undiluted reply from a listserv member who has already taken the mainstream path of high-level local bar association officer positions, with my responses in CAPS, and with his final reply in italics: "Jon, I am as big a civil liberties guy as most who say they are, but do you really think it should not be a crime for some pervert to take a picture up my daughter's skirt or down my wife's blouse. This kind of activity makes women, and I guess theoretically some men, feel violated. MY ANSWER TO YOUR MESSAGE IS MAINLY FOUND AT THE FOLLOWING URL THAT'S IN MY ORIGINAL MESSAGE, AND IN THE TV INTERVIEW WITH ME LINKED THERETO: <http://markskatz.com/MarylandArrestLawyers.htm> . If I catch them doing that to my wife or daughter, they better hope they are carrying an unregistered concealed weapon that the police have never found on them because I beat them half to death. I REGRET YOUR DECISION TO RESORT TO SUCH LANGUAGE, PARTICULARLY IF YOUR WORDS ARE NOT MEANT TO BE HYPERBOLIC. Isn't activity that most of society feels is repulsive and intrusive on others and threatens to cause breaches of the public peace for revenge I THINK YOU HAVE JUST DESCRIBED LUNCH COUNTER SIT INS IN THE SOUTH, AND CIVIL RIGHTS MARCHES IN THE SOUTH. NO, I DON'T THINK SUCH ACTIVITIES SHOULD HAVE BEEN CRIMINALIZED. , the exact kind of activity that needs to be criminalized? Jon, I think we pretty much disagree on this subject. I think there is a big difference between engaging in a lunch counter protest, which was criminal activity at the time, as a means of civil disobedience intended to change the law for the good of as class of people and the nation as a whole, and getting your jollies by invading the privacy of others by sticking a camera up their skirts and down their blouses. If you don't think that activity that most of society feels is repulsive and intrusive on others and threatens to cause breaches of the public peace for revenge should be criminalized, what should be? How would you define what should be criminalized? As to the language, you are right. Because the conduct is now illegal, I would refrain from beating the crap out of the pervert and call a cop. . if I could keep my temper in check. In response to my above-responding colleague, I say (1) my opinions at <http://markskatz.com/MarylandArrestLawyers.htm> still explain my viewpoint, (2) the current statutory language on peeping tom activity, upskirting/downblousing, and surveillance activity continues to be unconstitutionally vague and overbroad to enable police to detain and arrest plenty of innocent people doing nothing that is or should be criminal, and (3) I do not think that the repeal of such laws is going to bring on mass rioting; we are not talking about the Frankenstein monster here (nor about his abby normal brain). If the criminal upskirting and downblousing laws stay on the books, what comes next? Arrests of people for oggling others at the beach, snapping pictures of Mardi Gras flashers, taking backside videos of people on an afternoon stroll (the latter videos already are earning commercial income)? Plenty of people probably want to switch any boundary from a reasonable expectation of privacy to protecting one's dignity and desire to be left alone; such a society would mirror what happens when misguided teachers overdiscipline students in grade school (don't get me started about unfair elementary school discipline). Again I ask -- and not merely rhetorically -- why do we have criminal laws? Is it because by overcriminalizing society we can shield ourselves from the most ugly, base, and uncomfortable of human activities, so that we may continue our daily lives as

pleasantly as if we were having the best vacation at a tropical resort? Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

One misconception and one oversight.

Misconception: The Indians lived in peace and harmony before we arrived. Fact: A close study of history will reveal countless, nearly endless bloody conflicts between tribes.

Oversight: Nowhere, ever, does the "steet" side of "legal" crime enter the picture--of any discussion of crime, its components, causes, and severities.

Anonymous on Sep 1 2007, 00:14