



How to end overcriminalization

By: Bill Wilson- March 3, 2013

In June 2011, 11-year-old Skylar Capo saved a baby woodpecker from her family's cat. "I've just always loved animals," the aspiring veterinarian told her local news station. "I couldn't stand to watch it be eaten."

After rescuing the bird, Capo kept it by her side in a small cage for a few days to make sure it wasn't injured. She even took it along on a family trip to the local Lowe's hardware store. With the hot sun beating down overhead, Capo decided to carry the cage inside the store so the tiny woodpecker wouldn't get overheated in her car.

Little did she know, these acts of compassion violated a federal statute against the "possession" or "transport" of a migratory bird -- or that a Virginia game warden would be on her family's doorstep days later demanding payment of a \$535 fine.

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Because this story involved a little girl and a baby bird it made national headlines. But the underlying problem of overcriminalization rarely receives such attention -- which is just how big government likes it.

The proliferation of needless criminal statutes makes lawbreakers of ordinary people who have no ill intentions. As Tim Lynch of the Cato Institute puts it, they "find themselves on the wrong side the law without even realizing it."

Take Eddie Leroy Anderson, a retired logger from Idaho whose only crime was loaning his son "some tools to dig for arrowheads near a favorite campground of theirs," according to the Wall Street Journal. Anderson and his son found no arrowheads, but because they were unknowingly on federal land at the time they were judged to be in violation of an obscure Carter-era law called the Archaeological Resources Protection Act.

The government showed no mercy. Wendy Olson, the Obama appointee prosecuting the case, saw to it that father and son were fined \$1,500 apiece and each sentenced to a year's probation. "Folks do need to pay attention to where they are," she said.

Statutory law in America has expanded to the point that government's primary activity is no longer to protect, preserve and defend our lives, liberty and property, but rather to stalk and entrap normal American citizens doing everyday things.

After identifying three federal offenses in the U.S. Constitution -- treason, piracy and counterfeiting -- the federal government left most matters of law enforcement to the states. By the time President Obama took office in 2009, however, there were more than 4,500 federal criminal statutes on the books.

"Too many people in Washington seem to think that the more laws Congress enacts, the better the job performance of the policymakers," Lynch notes. "That's twisted."

Not long after Skyler Capo's battle with Virginia game wardens, former U.S. Attorney General Edwin Meese joined Lynch in testifying before a House committee exploring the problem of overcriminalization. "The federal criminal code is overly extensive," Meese testified. "There are more laws than are needed or could possibly be enforced. There are too many redundant, superfluous and unnecessary criminal laws. They should be consolidated and/or eliminated."

A compelling new study on overcriminalization by University of Tennessee professor Glenn Reynolds (of Instapundit fame) shows that there are many solutions to this problem, including an end to prosecutorial immunity, "loser pays" legislation and a ban on plea bargains.

But more drastic measures may be required. Reformers should really begin by going through the entire body of federal criminal law -- starting with all statutes that carry jail time -- operating under the presumption that every statute should be eliminated unless it can be justified as essential. The federal government, especially, has no business duplicating state functions or applying criminal penalties to advance mere social engineering objectives.