

Lawmakers Turning Us Into a Nation of Criminals; Where Does the Constitution Authorize the Drug War?

by [Steve Stanek](#)
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The [Wall Street Journal on Monday](#) informed us that “state legislators passed about 31,000 new laws in 2010, down slightly from the previous year.” That works out to about 620 new laws per state. And this flood of new laws happens each and every year.

Today Dr. Roger Roots, J.D., who has tracked courtroom rules of procedure for the American Journal of Trial Advocacy, [writes this at LewRockwell.com](#) about the new edition of West’s Criminal Code and Rules, which now runs to more than 1,600 pages on the rules to conduct criminal federal trials:

In theory, these rules provide an accused with avenues to defend himself. But one can judge a scheme of procedural rules by its fruits, and the codification, growth and expansion of the Federal Rules of Procedure (of which most state procedural codes are virtual copies), have produced the world’s highest incarceration rate – and probably the highest incarceration rate ever registered in any society in human history.

Even more significantly, the Federal Criminal Code and its procedural rules and guidelines have almost eliminated criminal trials in many jurisdictions, because most defendants are unable to defend themselves effectively under the rules and simply plead guilty. Such is the lopsided nature of the Federal Rules that they produce untold mountains of printed accusations and claims against individual Americans, while

facilitating no more than a few sentences (generally at sentencing hearings) in rebuttal in most cases.

Luke Rosiak of [Sunlight Foundation Reporting Group](#) also informs us:

The number of federal criminal prosecutions in fiscal year 2009 jumped nine percent from the previous year—a 42 percent increase in the last five years despite the fact that crime has been on the decline for many years. Since 1982, federal criminal justice expenditures have exploded from \$4.2 billion to \$36 billion, according to the Bureau of Justice Statistics, with Bureau of Prisons spending rising 20-fold and still leaving penitentiaries overcrowded.

According to the U.S. Bureau of Justice Statistics, 7,225,800 people at year-end 2009 were on probation, in jail or prison, or on parole — about 3.1 percent of adults in the U.S. resident population. [No other nation](#) has so many of its citizens in the penal system. Half the federal prisoners and about one-quarter of state prisoners are there because of drug crimes, which I'll come back to in a moment.

For two years, I kept an article from the March 3, 2007, edition of *The Chicago Tribune*. The article noted that in the early 1960s, Illinois' criminal code covered 72 pages. By 2007 it had expanded to nearly 1,300 pages.

So Illinois' criminal code is about 18 times bigger than it was less than 50 years ago. I'm in my 50s, and have lived all my life in Illinois. I can assure you life in this state has not become 18 times better or safer, nor have the politicians who pass these laws become 18 times more honest. But Illinois is no match for the federal government, which designates some 4,000 crimes, according to Professor Erik Luna, in his essay for the book, [Go Directly to Jail: The Criminalization of Almost Everything](#).

I remember as a boy being told “ignorance of the law is no excuse.” But when criminal statutes cover hundreds or even thousands of pages — and when even experts cannot say with certainty what is legal or illegal anymore — how can it not be an excuse? Others agree. Here's [Timothy Lynch](#), director of the Cato Institute's Project on Criminal Justice, testifying before a Congressional subcommittee in 2009:

The sheer volume of modern law makes it impossible for an ordinary American household to stay informed. And yet, prosecutors vigorously defend the old legal maxim that ‘ignorance of the law is no excuse.’ That maxim may have been appropriate for a society that simply criminalized inherently evil conduct, such as murder, rape, and theft, but it is wholly inappropriate in a labyrinthine regulatory regime that criminalizes activities that are morally neutral. As Professor Henry M. Hart opined, ‘In no respect is contemporary law subject to greater reproach than for its obtuseness to this fact.’

Here's where I return to drug crimes.

The federal government in 1971 launched a “war on drugs.” Millions of people have been imprisoned for drug offenses since then. We’ve seen cities and neighborhoods destroyed by violent gangs that exist because of the drug war. In Mexico, Colombia, and various other countries around the world, narco-terrorists have killed tens of thousands of people and destroyed economies as a result of our drug war.

Police, prosecutors and lawmakers want us to have respect for the law, yet the drug war – which has arguably done more to ruin lives, harm cities, and increase violence than any other government policy – is itself illegal.

Remember, this nation nearly 100 years ago launched a war on a class of drugs called alcohol. There was no authority in the Constitution – the Constitution that police, prosecutors and lawmakers swear to uphold and defend – for the government to ban alcohol or any other substance. So 100 years ago, those who wanted to ban alcohol worked to amend the Constitution to grant that authority. In 1919 they succeeded, and the Prohibition Era began.

Prohibition – the war on alcohol – gave rise to Al Capone and other murderous gangsters and organized crime. Many experts concluded that problems related to alcohol [actually increased](#) during Prohibition. Contempt for the law was so open that President Warren G. Harding, who had voted for Prohibition while in the Senate, [kept the White House stocked with liquor](#).

By 1933 millions of citizens had realized that Prohibition was a disaster, and the amendment authorizing Prohibition was repealed, thus leaving the Constitution granting no authority for Congress to ban alcohol or any other substance.

Yet for 40 years this nation has banned marijuana and other narcotics, imprisoned millions of people for using banned narcotics, and spent huge sums of money on law enforcement, court systems, and prison systems to deal with drug users, smugglers, gangs and related violence. And it’s done this with no Constitutional amendment authorizing any of it.

Republicans to be sworn in as members of Congress tomorrow [have announced they will read the Constitution aloud](#) as their first order of business on Thursday. They [pledge to include in their legislation](#) references to the relevant authority in the Constitution.

I would love for them to start by trying to cite the authority for the United States to continue its war on drugs. If lawmakers nearly 100 years ago had no authority to ban the drug alcohol until the 18th Amendment to the Constitution gave them that authority, there is no way today’s lawmakers have the authority to ban alcohol or any other drug because the 21st amendment rescinded the authority.

Citizens are afflicted by thousands of local ordinances and state and federal laws that are arbitrary and abusive. No set of laws has been more arbitrary and abusive than those that have been inflicted on us in the name of the unconstitutional and illegal war on drugs.

Until the war on drugs ends, we can expect government to continue imposing new laws that amount to a virtual declaration of war on our freedoms.

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