

RULE OF LAW VS. NUMBER OF LAWS

Would you have been more likely to be murdered in 1900, if you had been alive, than in 2000? If you answered no, as I expect most people would, you would be correct. The evidence is, albeit imperfect, that most Americans were less likely to be murder victims 100 years ago than today.

Sociologists, criminologists, economists, and assorted other “ists” have many theories to explain the rapid rise of murder during the later part of the 20th century despite all the new social programs, laws and regulations and the massive growth of government law enforcement.

In the last four months, we have experienced the biggest terrorist crime in our nation’s history, and the biggest corporate meltdown that appears to have been caused, at least partially, by serious misconduct. Part of the reaction to these unrelated events has been the predictable call for more laws and regulations. In the past 100 years, many thousands of additional laws and millions of regulations have been passed to protect us from wrongdoers, yet we are no safer.

Obviously, the attacks of September 11 were vastly more serious than the collapse of Enron, because it challenged the very idea that a free and open society can exist in an age where terrorists can utilize weapons of mass destruction. Yet we have been subjected to endless silly statements, such as that on Jan. 29 by New York Times economic columnist Paul Krugman: “I predict that in the years ahead Enron, not September 11, will come to be seen as the greater turning point in U.S. society.” Mr. Krugman has been loudly demanding more financial regulation, perhaps because he feels such demands will mitigate his own hypocrisy for having accepted \$50,000 from Enron for, as he says, “doing nothing.”

A law against hijacking an airliner and flying it into a building would not have stopped the attacks of September 11. Making it illegal to provide false financial reports and to make dishonest statements about the condition of one’s company did not keep Enron from bankruptcy. Both of these events were, in part, caused by the government not enforcing laws and regulations that it already had on its books.

In the case of the terrorist attacks, several of the terrorists were not in the U.S. legally because their visas had expired or were obtained under false pretences. The Immigration and Naturalization Service and the FBI, as well as various intelligence agencies, all failed in their responsibilities.

In the Enron case, the accounting profession, which has private regulatory responsibilities (i.e., to provide accurate accounts and representations to management, stockholders, and the government) did not meet its responsibilities. The government regulators, in the form of the Securities and Exchange Commission, appear to have inadequately reviewed and analyzed the reports received from the company and its auditors.

As counterintuitive as it may seem, more laws and regulations can make us less safe, while fewer may make us safer. The problem is that both the cop and the citizen get lost in the maze of ever-increasing rules. We know it is impossible for any one person to know at all times that he or she is in compliance with the demands of the state. As one example, no one fully understands the Internal Revenue Code, yet we are all expected to comply. Legal complexity undermines the rule of law because no one understands all the rules and, thus, breaking the rule has less moral sanction. This breeds a destructive cynicism toward the law.

In the early 1990s, I was involved with the economic transition in several countries of Eastern Europe and the former Soviet Union, and saw firsthand the misery that stems from the lack of rule of law. These countries had rules and

regulations designed to control almost every aspect of one's life, yet there was no rule of law. Excessive rules and regulations provided judges and bureaucrats an almost endless opportunity to solicit bribes because the system was so arbitrary and, as a result, the people did not respect the law.

The rule of law is needed for both a civil society and economic development. Competent judges and juries could probably function quite well if the only law, beyond the structure of the government, was (to paraphrase the Declaration of Independence and the Virginia Declaration of Rights): Everyone has the right to life, liberty and property and no person has the right to deprive another of his or her right to life, liberty or property by physical force or fraud. (Fraud involves knowingly making false representations.) If the above sentence were the law of the land, the government would have all the authority it needed to fully prosecute the terrorists, and any Enron official who misbehaved.

Unfortunately, the Congress is moving toward passing more laws and regulations. For example, the "Patriot Act" just passed by Congress now requires more financial institutions (not just banks) to file "currency transaction reports" and "suspicious activity reports" on their customers.

The government gets tens of millions of these reports, at great cost to the institutions providing them, yet there are so many reports as to make them all but useless. The government actually had a couple of reports on the September 11 terrorists, but did not realize it until months later. They could not find the needle in the haystack so Congress is telling them to build a bigger haystack.

The basic function of government is to protect person and property. That function requires strict enforcement of a few laws and regulations that the citizens clearly understand, as well as an intelligent and rational application of the law. A civil and prosperous society does not come about by the government passing endless legislation. It occurs when you have limited government and a society where mothers and fathers teach their children to respect others' property and person, and to be truthful in all their dealings.

Government officials, from the president on down, can be helpful in using their "bully pulpits" to reinforce the importance of good character in society. And members of Congress could set an example by cleaning up their own dishonest rhetoric.

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