

Enforcing the Law: Why or Why Not?

Is a law absolute and not ever to be ignored or enforcement postponed? In truth, we generally recognize that laws cannot be enforced in every instance against every offender. Thus, for the most part, we abide by the decisions of those charged with enforcement. However, when discretion becomes discrimination or profiling, we can and should object, on moral as well as legal and constitutional grounds. Similarly, we might object when an executive (governor, president) signs legislation and then either backs away from its mandate or refuses to enforce it or when the voters pass initiatives that are ignored by the government.

There is a presumption in our democratic society that laws are enacted to serve the public good. At times laws created to serve the public or common good curtail or thwart individual rights and freedoms. A Constitutional dynamic exists in our country with relation of federal laws to state laws. Most challenges to laws arise because of the tension between serving the public good and guarding individual or state rights and freedoms. Other factors, however, come into play with respect to a citizen's, an institution's, or a government entity's obligation to obey the law.

- The right and privilege of individuals or groups to file a legal complaint or appeal to a court of law to adjudicate a fair, just or reasonable decision with regard to the spirit or intentions of a particular law and its application or enforcement.
- The inherent right to resist or challenge laws that conflict with the moral conscience of a citizen or group of citizens.
- When enforcers of the law abuse their power.
- The corruption of the legislative process to enact laws supporting the self-interest or promoting the influence of a few over the public at large.

In many of these situations there may be a presumption that the higher legal authority has the right and power to make decisions about the obligations and enforcement of particular laws that are binding on lower levels of legal authority. Also, laws and rules are generally designed to regulate activities that can be publicly observed. In such cases enforcement is relatively easy. But when laws breach moral principles, we have a different situation. Then enforcement, is difficult and often requires legal decisions to be made about the kind of ethical behavior that is expected.

Also, consider the case of unfunded mandates placed on states by the Federal government or on municipalities by the state. The reluctance of states and cities to put the burden on their citizens for laws and ordinances they feel are unnecessary represents another example of complexity in the enforcement of a duly enacted statute.

Frequently the question of adherence to a law is complex. The Sanctuary Cities bill in Texas, which attempts to draw a hard line for the enforcement of immigration law, and the Justice Department's legal action against California law limiting the responsibility of local officials to assist immigration officials are instances where compliance with legal requirements is murky

and ill-defined. In the first case, some Texas cities are attempting to refrain from complying with demands they think are legally questionable or that may make it more difficult to carry out their own responsibilities. In the second case, the state is trying to reduce the pressure on state and local authorities to act as surrogates for federal officials in a manner they think makes their citizens less safe.

Take another instance. Despite a federal law that criminalizes marijuana use, 30 states and the District of Columbia have laws legalizing marijuana in some form. Eight states and the District of Columbia have adopted the most expansive laws legalizing marijuana for recreational use. Voters in Maine approved a ballot measure legalizing marijuana in 2016. The state, however, has not yet adopted rules for licensed marijuana growers or retailers, nor has it begun accepting licenses. The governor of Maine vetoed a bill that would have established a legal framework for sales of the drug. Where does the power to set legal requirements lie? Should a vote expressing the will of the people be the same as a law? The 30 states that have legalized marijuana in some form contain a substantial majority of the U.S. population. How should we view this discrepancy between Federal and state law?

What about regulations? The Federal government has passed laws delegating the authority to develop regulations to its agencies and others. Sometimes states reject such regulations and refuse to act on them or actively challenge them in court.

A further complicating factor is the practice of U.S. Presidents to issue “signing statements” when they sign bills passed by Congress. Presidents often use signing statements to express their intention not to enforce parts of legislation that they consider to be unconstitutional, or otherwise provide an interpretation of the law as executive branch agencies will be directed to enforce it. A common argument is that “In appropriately limited circumstances, [presidential signing statements] represent an exercise of the President’s constitutional obligation to take care that the laws be faithfully executed, and they promote a healthy dialogue between the executive branch and the Congress.” The history of signing statements suggests that presidents use this tactic most frequently when Congress is controlled by the other party and the president takes issue with the law Congress has passed.

Obedience to the “law” is not as clear cut as it might seem. Civil disobedience in the face of laws has a long history in the US. Resistance to laws against such things as racial integration and same sex marriage have resulted in significant changes in the legal system. Presidents have objected to laws passed by Congress and even though they signed them, indicated that parts of the law might not be enforced in the manner Congress intended.

The message board has some examples of legal discussions about this topic. Check there for more information.