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## Blank Check Laws

In certain types of laws, a worthy ideal is enacted with deliberately vague wording in the hope that authorities will administer it wisely. Like a blank check, in which the writer hopes that his agent will fill in the numbers correctly, there is great danger as well as some utility in such a procedure. Three laws—California's Proposition 65, the Delaney clause to the Food, Drug, and Cosmetic Act, and vagrancy laws in general—illustrate the potential power and abuse of this legislative approach.

Preventing hazards from toxic chemicals is the laudable goal of Proposition 65 (News & Comment, 20 Jan., p. 306), which stipulated that business must warn the public if it knowingly exposes them to a substance that poses a significant risk of cancer or birth defects. If a company is sued for releasing a chemical without proper warning it must assume the burden of proof that the compound is safe. The law failed to define "significant risk," and left no guidelines as to how one could prove that a chemical is safe. Guidelines are now being drawn, but it is too early to say whether they will solve the problems of vague wording in the legislation itself.

The Delaney clause, whose purpose was to protect the consumer from carcinogens, included a requirement that no chemical should be introduced into food at detectable levels if it caused cancer in experimental animals. Because analytical techniques improve continuously, in some cases this requirement imposes a limit of a few molecules of substances that have been shown to require many grams to cause cancer as deduced from experiments in animals. In the administration of the Delaney clause, the authorities have wisely winked at provisions that would, for example, have prevented addition of antispillage chemicals to foodstuffs on supermarket shelves. Failure to do so would have caused many more deaths from food poisoning than could possibly have been prevented from cancer. In general, the Delaney clause has been administered well, because it has been used when needed and ignored when chemical benefits outweigh risks.

Vagrancy laws have a long history in this country, including abuse in the 1930s when individuals were harassed for no reason other than lack of money or job. Currently, some nebulous vagrancy laws are being eyed with interest because it is recognized that many of the homeless either are incapable of taking care of themselves or represent a danger to others. A vague law, which would give authorities the power to assign individuals to shelters, mental hospitals, or release on their own recognizance, would make great sense in some ways, but would pose serious civil liberties problems in others.

These three blank check laws arouse curiously polarized, and often simplistic, responses. Ardent civil libertarians, some of whom view business with suspicion, dislike the blank check provision of vagrancy laws but admire the same vagueness in Proposition 65. Supporters of business, some of whom view the homeless with distaste, think Proposition 65 is a disaster but approve the ambiguity of vagrancy laws.

A good argument can be made for giving authorities some discretion. There is not going to be some absolute level of risk in toxic substances, so a caveat emptor approach makes sense. And, because scientific data are continuously altering the assessment of risk, standards need constant revision. In the case of the homeless the line may be vague between those who are likely to be violent and those who simply cannot cope, and no law can define that difference clearly. There is therefore a justification for some degree of latitude in the law. On the other hand, vaguely worded statutes are an invitation for expensive and inappropriate legal battles as well as bureaucratic abuse. It is also unfair to force responsible civil servants to wink at provisions in the law to make it workable. If diverse administrators, judges, and juries are all interpreting the law differently there is a good chance for chaos, in which businesses cannot make coherent plans and individuals cannot protect their rights.

Perhaps such laws should be modified to resemble the standard procedure used in writing a blank check for completion by an individual in whom one has partial but not absolute trust. In that case, leaving some leeway by allowing a 10% markup or markdown would provide room for judgment without gross uncertainty. If we have to live with vaguely worded laws in our complex society, they should be drafted to allow some latitude, but should define with great care the outer limits that will ensure orderly procedures and civil rights. In the long run it is as unwise for society as it is for individuals to write blank checks.—DANIEL E. KOSHLAND, JR.