

"Don't Worry, It's Just a Tool": Enacting Selectively Enforced Laws Such as Curfew Laws Targeting Only the Bad Guys

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Abstract

The United States Constitution is in place to protect the rights of the citizens. Yet, the current environment leans towards the enactment of more and more laws at all levels of government which erode or eliminate those rights. It is suggested that the fear and chaos of these stressful and uncertain times results in a willingness on the part of legislators and the public that elects them to trade freedom for security. This can have disastrous consequences. Cicero (42BC) observed, "When people are willing to give up rights for security, they will, in the end, lose both." This paper examines how laws which violate civil rights, such as curfew laws are passed by municipalities and accepted by the community with an understanding that they will only be selectively enforced against "the bad guys". Citizens are told by law enforcement that they need such laws as a "tool" and without them they are powerless to deal with the problem population. The fears and frustrations of the public are played upon to give increased powers and latitude for discretionary enforcement of laws to police.

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“Don’t Worry, It’s Just a Tool”: Enacting Selectively Enforced Laws Such as Curfew Laws Targeting Only the Bad Guys

Introduction

The United States of America was founded on the principles of freedom and a constitution is in place to preserve these freedoms and assure that all receive equal treatment under the law. Yet in spite of the protections afforded by the constitution, we are increasingly seeing the violation of rights in the name of “protection” or for reasons of security. While the events post 9-11 and the creation of the Department of Homeland Security and the "Patriot Act" are the most obvious and glaring examples of the exchange of freedom for perceived security or the greater good, there are numerous additional examples at all levels of government. Situations exist where laws are made which allow government and law enforcement to invade the private affairs of citizens over trivial issues. Further, the perceptions that such laws are necessary often are based on distorted or erroneous data and cognitive biases created by “truisms” or media coverage.

Of course freedom does not allow total license to do as one pleases. In a free country you still have to assure that your actions do not impose upon the rights and freedoms of others. The freedom we have is a limited freedom based on respect for the rights of others. Currently however, it is becoming more and more common for factions in our society to push for laws which greatly restrict the freedoms of others and create crimes out of trivial and personal action. This paper will explore some of these restrictive efforts and examine why they occur.

Feel Good Laws

Attempting to address a social ill

For the most part the focus of this paper will be on what are commonly called “feel good laws.” These are laws that are enacted, often with little intention of enforcement, and no concern for the possible negative impact, but with the promise that they will somehow have some major impact on a social ill. Nanny laws also fall into this category; trivial issues are legislated in the apparent belief on the part of legislators that people should have every aspect of their lives dictated by law for their own safety and protection. Somewhere along the line the need for government to intervene to protect citizens has been extended to intervention in too many aspects of life. So we outlaw crack cocaine, and most agree to this as it is clearly a threat to the greater good. But while most agree that crack cocaine should be outlawed, we would not like to see government prohibitions against cheese fries which are also unhealthy and lead to social costs and health problems. Yet we are in fact moving quickly in this direction, where trivial or difficult to enforce prohibitions pushed by small factions of society are becoming law. Sometimes laws dealing with trivial issues are pushed by law enforcement in spite of their inability to deal with real threats to public security. It is almost as if such laws are a way to deflect the public focus away from major problems and highlight minor problems which are more easily controlled, or to target a responsive and responsible population which will obey the law, while a more dangerous population continues unabated. Such laws are generally enacted with the promise of solving a problem recently highlighted in the media.

The Effect of Feel Good Laws

Of all tyrannies, a tyranny exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end, for they do so with the approval of their own conscience. -- C. S. Lewis (n.d.)

There is evidence that the proliferation of these often unenforceable or selectively enforced “feel good laws” are detrimental to society. According to an article on licensing scofflaws and enforcement, in *Animal People* (2002), “Regulations of any kind seldom succeed unless a large majority of the people or institutions to be regulated are already voluntarily in compliance or willing to become compliant with relatively little nudging at the time that the regulations start to be enforced. If more than a small percentage object to a regulation enough to become scofflaws, the enforcement burden becomes overwhelming, and the regulation eventually tends to be ignored or repealed.” As more and more laws are enacted that are trivial and unenforceable, normally law-abiding citizens find themselves law breakers if they toss batteries in the garbage, drive with headlights off in the rain, fail to recycle plastic bags, own an exclusively indoor unlicensed cat, do not come to a full stop at a stop sign when riding a bike, etc. Such a situation reduces respect and compliance for all laws, or selective action on the part of the public regarding what laws they choose to obey or ignore.

Moral Panic

Feel good laws which may be impossible to enforce or are intended to be only selectively enforced are often enacted as a result of moral panic. Moral panic is a feeling of fear or impending threat shared by part of the population with regard to another group in the population which is seen as a threat to the social order or personal or public safety. Stanley Cohen is credited with coining the term, moral panic, and discussed the phenomenon in his book, *Folk*

Devils and Moral Panics (1972). Those who come to be defined as the source of the problem in a moral panic are labeled by Cohen “folk devils”, while those who plant the seeds of the panic and nurture the resulting crop of fear, hatred, and resulting prohibitive legislation are defined as “moral entrepreneurs.” Often these moral entrepreneurs are media savvy and well-funded and not above taking advantage of existing media events. The media has always served the needs of such moral entrepreneurs, even if the media are not intentionally crusading against folk devils. Simply choosing to factually report some news over other news can be sufficient to further a moral panic. The mass media clearly has the power to focus public awareness, maintain public awareness, and shape public opinion.

The Power of the Media

The media also has the power to propagandize society, a process whereby a concerted set of messages aimed at influencing the opinions or behavior of large numbers of people are repeatedly put forth. While this may be motivated by the need to attract viewers, or readers, the outcome may be a skewing of public perception and result in a moral panic and subsequent willingness to enact laws to address the perceived problem. Special interest groups such as animal rights activists are accomplished at timing media coverage of raids on large-scale dog breeding facilities, animal agriculture businesses etc. to correspond to pending legislation designed to outlaw practices or enact stricter government controls. Currently, HSUS, the Humane Society of the United States, an animal protection/animal rights organization which is currently supporting increasing controls on dog breeders is highlighting raids on breeding facilities and using its considerable resources to assure media coverage and influence public opinion. Such tactics are typical of organizations with an agenda or ideology and the resources to afford marketing, advertising, and public relations to influence public opinion (HSUS 2009).

Statistics, in Hall et al.'s (1978) view, are often manipulated for political and economic purposes. Moral panics are ignited in order to create public support for the need to "police the crisis," be it puppy mills or wayward youth and justify action or legislation to address the concern. The media are an important element in this process as they keep the issue in the limelight and gain the benefits of increased viewing of hyped stories

In order to maintain social control, municipalities, organizations, and special interest groups control public opinion and regulate the populous. Sometimes this is done through informal methods. However, due to a lack of popular support for these positions, these entities may rely more on legislation, limits on personal freedoms, and other sanctions to push their personal agenda. As societies become more complex and populations expand, informal means of social control yield to formal means of social control such as laws and other sanctions.

Stages of Moral Panic

According to Cohen (1972) moral panic has three identifiable stages:

1. Occurrence and significance. In this stage an event deemed media worthy occurs and receives extensive coverage. Examples include, pit bull mauls child, prescription drug parties popular among youth, poison found in Halloween candy, etc.
2. Fanning the flames with further social significance. The public is told that these stories are symptomatic of the larger ills of society—Dangerous dogs, teen access to drugs, unsafe environment for our children, etc. These events show the direction society is taking. Clearly, if action is not taken all will be lost. At this point the "experts" enter the fray and serve the role of opinion makers, lending legitimacy to the concern.
3. Social control—there has to be a law. Something must be done to deal with the problem. Some law has to be enacted to further sanction or stop those responsible for the problem. If something is not done we are all to blame. Just appearing to do something can lessen anxiety.

Cohen (1972) also identified the deviancy amplification spiral. This spiral follows the following steps:

Concern – Awareness that the behavior has the potential for negative effects on society as a whole.

Hostility—The group targeted must engender hostility, they must emerge as “them” and eventually “folk devils” in Cohen’s terms. A clear distinction between them and us must be made.

Consensus—There has to be agreement that the targeted group is a definite threat to society and action has to be taken to stop them.

Disproportionality—Action taken to address the “threat” is excessive when compared to the actual threat of the group.

Volatility—Moral panics disappear as quickly as they arise. If another topic takes the limelight they tend to fade.

According to the Deviant Amplification Spiral proposed by Cohen (1972), the spiral starts with some “deviant” act. While the act may not be criminal it is at least condemned by most of society. Newsworthy information on the issue is reported, but obscure examples which ordinarily would not be noted are now highlighted. What may be statistically low incidences of the behavior are now presented as “the tip of the iceberg.” Naturally it is impossible to prove that such is indeed the case. Real data indicating the fact that the behavior is very uncommon or usually benign is ignored. Thus the problem emerges as significant and the resultant outcomes as common. The public are sensitized and attend to and keep informed of the events.

Next public concern about the issue typically forces legislators, the police and the whole law enforcement system to focus on the specific deviancy—with a much greater degree of concern than it warrants. Municipalities should enact laws, and pressure is put on them to enact harsh penalties to deal with the threat. Ironically this action only serves to confirm that the contrived threat was in fact legitimate.

Moral panics take on a life of their own when the members of a society come to believe that threats and menaces exist and that “others” will act in ways they consider unacceptable, reject their values, and cause untold harm. Those that would do this are defined as the target for action and legislation and must be stopped.

Examples of Moral Panic

In terms of specific examples of moral panic, Satanic ritual abuse would top the list. This peaked in the 1980s. (Victor 1993). Jewkes (1998) also notes the reaction to pedophilia as a major incident of moral panic. Additionally the “war on drugs” and the fear of Arabs and Muslims in post-9-11 America (Bavelaar 2005) have been cited as incidents of moral panic.

One source of moral panic that has been consistent, albeit not always high-key, is the problem of adolescents as threats to society. The issue has achieved iconic status in society over the last 50 years as exemplified in films such as “The Outsiders” and “Rebel Without a Cause.” Not to forget the message in stage musicals either, such as the number “Officer Krupke” in “Westside Story” where wayward youths morph from street punks, to misunderstood and abused victims, to a social disease in the course of the number. And on a lighter note, there is the attribution of society’s ills in “The Music Man” to youth playing pool. Adolescents in society have often been the subjects of moral panic and curfew laws have been enacted as a response to this moral panic.

Irrational Policy and Moral Threat

Psychological and Social forces

In the retrospective analysis of irrational policy developed to deal with irrational threats, there is often an understandable tendency to view such aberrations as the outcome of either nebulous psychological and social forces and/or a single institutional entity (e.g., the media).

While we may not want to dismiss out of hand the effect of what are at best poorly understood psychological, social, and cultural forces, it is negligent to dismiss or understate the role of quite rational institutional self-interest and the equally rational institutional alliances that come into play in these situations.

As noted above, the single greatest social aberration in modern times was the perceived threat of Satanic Ritual Abuse of the 1980's and 1990's. While the social amnesia regarding the events of this period is almost as remarkable as the phenomenon itself, and confirms Cohen's (1973) observations of volatility with moral panics passing as quickly as they arise, any serious account of response to the imagined threat of Satanic Ritual abuse must involve an examination of the complex institutional nexus that evolved and the motives and interests that the threat served. While the event was a unique one in modern history, the pattern of the institutional response was altogether commonplace and can be seen in the response to relative minor perceived threats both before and after the period. In this paper we will look at the responses to a few such threats. In particular we look at curfew laws enacted to control youth.

In the early 21st Century United States, there is still considerable controversy over whether our kids are out to get us, we were out to get them, they are out to get each other, or whether we have reached a point of societal collapse in which all of those situations are true with equal fatality. Irrespective of the specific threats they may pose, it would appear that much of it is considered avoidable by the simple expedient of getting them off the streets.

Historical Roots of Curfews

Children running amok

According to a Harvard Law review article (*Juvenile Curfews* 2005) juvenile curfews have deep historical roots. By the end of the nineteenth century, curfews were fairly common in

America — over three thousand communities had them — and the arguments surrounding them had already fallen into the patterns that persist to this day. Those in favor of curfews argued that strict parenting and traditional families were in decay, particularly in cities: children were running amok, threatening social order, and failing to mature into proper citizens. Those opposed to curfews replied that most juvenile crimes occurred in daylight hours, that most children were not criminals, and that many legitimate nocturnal activities were being suppressed. Despite these concerns, curfews enjoyed substantial approval, particularly among progressives, and were declared by President Benjamin Harrison to be “the most important municipal regulation for the protection of the children of American homes, from the vices of the street.” The popularity of juvenile curfews increased significantly during World War II, when the absence of parents due to military service or wartime late-shifts resulted in a perceived lack of control over children.

Growth of curfew laws in the 1990’s

In the 1990s, not long after federal courts began to develop case law on juvenile curfews, juvenile victimization and crime rates seemed to explode across the country. It is therefore not surprising that juvenile curfews were widely sought, with support crossing political and racial lines. Advocates viewed them as a necessary step toward saving America’s imperiled youth and stopping epidemic juvenile crime, though detractors charged that curfews were little more than a for show ‘quick-fix’ response to what is perceived to be a serious problem. Over the course of a century, America effectively closed the nighttime streets to minors.

Juvenile Courts and Reform Ideals

David Wolcott (2001) explores the history of the juvenile justice system and the competing views regarding the motivations that brought it into existence. He documents that early interpretations of juvenile court tend to portray it as an embodiment of Progressive-era

ideals that developed between the mid-1890s and the mid-1910s. Scholars such as Herbert Lou and, more recently, Joseph M. Hawes (as cited in Wolcott 2001) presented juvenile court as the result of an emerging social philosophy where the state was responsible to intervene in children's social and familial relations in order to rescue them from delinquency. Wolcott says these scholars celebrated juvenile courts as the culmination of nineteenth-century reform ideals. Revisionist historians working in the 1960s and 1970s, however, emphasized the paradoxical results of the Progressive agenda. They saw in juvenile court's goal of intervening in troubled families a more repressive agenda of exercising "social control." Anthony Platt, (as cited in Wolcott 2001) for example, argued that the creation of juvenile court by elite reformers defined as criminal much behavior characteristic of working-class, immigrant youth, and in effect thereby invented the concept of delinquency. Similarly, David Rothman (as cited in Wolcott 2001) maintained that Progressive-era efforts to rehabilitate delinquents—efforts resulting from the "conscience" of reformers—devolved quickly into mechanisms to control young offenders more effectively and thereby served mainly the "convenience" of law enforcement and correctional officials (Wolcott 2001).

Intent Versus Practice and the Child

Serving the Needs of the Child and Society

In *Kent v. United States* (1966), Justice Fortas discussed the theory underlying the juvenile justice system, noting that the court proceedings were designed as civil rather than criminal ones and that the purposes of those proceedings were intended to serve the needs of the child and of society rather to adjudicate criminal behavior:

The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. The State is *parens patriae*, rather than prosecuting attorney and judge. But the admonition to

function in a "parental" relationship is not an invitation to procedural arbitrariness. (*Kent v. US*, 1966)

The decision in *Kent* goes on to observe the discrepancy between theory and practice, and locates the problem in the application of the theory rather than the theory itself:

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. There is much evidence that some juvenile courts...lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children. (*Kent v. US*, 1966)

Conservative backlash against cultural change

In contrast to the prevailing view that the creation of the juvenile justice system was a progressive movement, Anthony Platt (1980) holds it to be an essentially conservative reaction to the changing social landscape.

The participation of politically conservative, socially prominent, middle-class women in the child-saving movement further served to reinforce a code of moral values which was seemingly threatened by urban life, industrialism, and the influx of immigrant cultures. In a rapidly changing and increasingly complex urban society, the child-saving philosophy represented a defense against "foreign" ideologies and a proclamation of cherished values.

Despite the regressive and nostalgic thrust of the child-saving movement, it generated new social and professional roles, especially for women. The new job of social worker combined elements of an old role – stalwart of family life – with elements of a new role – emancipated career woman and social servant. At the same time, child-saving was further legitimized by the rising influence of a professional class of correctional administrators who developed medical-therapeutic strategies for controlling and reforming "delinquent" youth.

The child-saving movement has its most direct consequences on the children of the urban poor. The fact that "troublesome" adolescents were depicted as "sick" or "pathological," were imprisoned "for their own good," and were addressed in a paternalistic vocabulary, and exempted from criminal law process, did not alter the subjective experiences of control, restraint, and punishment. (Platt 1980: 177)

As Norton (2000) observes:

When arguing in favor of curfew laws, proponents proclaim an intent to reduce juvenile crime and victimization. Rarely, however, do they discuss the history of curfew laws in order to critically assess their potential utility. Society should remember that curfews have traditionally been created by the upper class as a method to control the movements of the lower classes. Curfews may therefore constitute a preemptive strike against an entire segment of the population presumed to have a propensity to commit crimes. (Norton 2000: 185)

Gender Specific Curfews

Protecting the fairer sex

In addition to general juvenile curfews, specific curfews applying only to females persisted until the 1970's.

In *Robinson v. Board of Regents of Eastern Kentucky University*, a female student challenged the curfew, arguing that it was unconstitutional because it violated the Equal Protection Clause of the Fourteenth Amendment. ... The curfew regulation survived the Sixth Circuit's rational relation test because the state interest in the discriminatory statute was safety: Women are more likely to be attacked and less likely to defend themselves. The Sixth Circuit's safety justification which permitted curfews targeting women effectively kept some young women under lock and key as a precaution against the improper behavior of men.

Gender-based curfews, however, only reinforce improper behavior rather than create incentives for lawfulness. Selective curfew laws criminalize otherwise lawful behavior and punish individuals for their status as potential crime victims. Like gender-based curfew laws, juvenile curfew laws similarly aim to protect those who would be crime victims. However, as in the previous example, these laws punish potential victims rather than aggressors. Furthermore, rather than seeking to create a safer environment for all citizens, curfew laws aimed at potential victims demonstrate that lawmakers have succumbed to fear. Fearing for the safety of some, legislators attempt to shield potential victims at the victim's expense. However, if these potential victims choose to leave their homes in violation of a curfew law, not only must they fear their aggressors, but also criminal prosecution. (Norton 2000: 175)

A Tool to Get the Bad Guys

Selective Enforcement

In recent decades, curfew laws have been increasingly employed as a weapon against gang activity. When laws are proposed or enacted, the public is assured that this law is a needed

“tool.” The public is told this will be a discretionarily enforced law to give law enforcement something to use against the “bad guys.” One has to ask however, if they are indeed bad guys, are there not already laws in place such as underage drinking, vandalism, loitering, etc. to address their unlawfulness?

Despite evidence that curfew ordinances do little to achieve their stated objectives of reducing juvenile crime and juvenile victimization (and in many cases, of promoting parental responsibility), they remain popular instruments of crime control. In part, this can be attributed to a basic social fear of juveniles per se, and an irrational social response to the fact that each new generation does present a threat to the existing social order (it is worth noting that what would become known as the Great Generation that fought WWII was frequently characterized in its time as an indolent and hedonistic generation of lost youths).

Parental Rights and Responsibilities

Court Rulings

In *Nunez v. City of San Diego* (1997), the US Ninth Circuit Court of Appeals ruled that the San Diego curfew ordinance was unconstitutional. Among the defects it found in that ordinance was an unconstitutional intrusion on parental authority. In discussing the right of parents to rear their children, the Court stated:

Examination of the ordinance's burden on the fundamental rights of the minors' parents provides an independent basis for our conclusion that the ordinance, even if construed to avoid vagueness, is nonetheless unconstitutional. It violates the plaintiff parents' substantive due process rights. (*Nunez v. San Diego* 1997: 7)

The *Nunez* decision notes that the “right to rear children without undue governmental interference is a fundamental component of due process,” and that while parental right are not absolute and that government has a compelling interest in the health, safety and welfare of minors, “the custody, care and nurture of a child reside first in his or her parents.” While

affirming the right of the state to act as *parens patriae* in matters in which it has a compelling interest, it observes that the...

broad sweep of the ordinance, and the paucity of exception to allow unsupervised nocturnal activity, burden the parents just as they do the minors.

The curfew is, quite simply, an exercise of sweeping state control irrespective of parents' wishes. Without proper justification, it violates the fundamental right to rear children without undue interference. (See *Hodgson v. Minnesota*, [497 U.S. 417, 446](#) -47 1990) ("The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to the American tradition.") The ordinance is not a permissible "supportive" law, but rather an undue, adverse interference by the state... The ordinance does not allow an adult to pre-approve even a specific activity after curfew hours unless a custodial adult actually accompanies the minor. Thus, parents cannot allow their children to function independently at night, which some parents may believe is part of the process of growing up. (*Nunez v. San Diego* 1997: 19)

Municipal Response to Court Rulings

Lack of full compliance

After the *Nunez* decision, many municipalities in the jurisdiction rewrote their curfew ordinances to comply with *Nunez v. San Diego*; most, however, balked at bringing them into full compliance with this particular portion of the court's opinion—in effect, simply ignoring the Court's determination that the violation of parents' rights was an unconstitutional burden. Given that the appellate law on curfew ordinances was inconsistent, many municipalities in the western states were optimistic that the *Nunez* decision would be overturned.

The City of Citrus Heights, which had a curfew ordinance which was substantively identical to the San Diego ordinance, is one of many examples of a municipality which took a banquet approach to the *Nunez* decision. In 2003, the city council was petitioned to rescind or rewrite its curfew ordinance, expressly citing the *Nunez* decision. While the new ordinance which was adopted in 2004 did address some of the issues raised in *Nunez*, it balked at fully complying with the Court's decision regarding both freedom of speech and parental rights. The

city's choice to disregard controlling law in favor of its own law-enforcement preferences casts serious doubt on its own sincerity about the law and the claims deriving from that putative sincerity. When a municipality itself is a scofflaw, sanctimonious statements about the importance of law can only be viewed as mere hypocrisy at best; and juveniles are not oblivious to either the law or the workings of power.

Problems Regarding Judicial Review

Differing opinions

Judges have been unable to come to an agreement on what level of evaluation to use when judging the constitutionality of curfew laws. Indeed, not only have judges differed on what level of scrutiny to use, but they have also reached differing opinions on the constitutionality of laws when using the same level of scrutiny.

Laws that are in conflict with the Due Process Clause to the XIV Amendment to the United States Constitution can be evaluated on procedural grounds and/or substantive grounds. Procedural due process covers the process by which a person can challenge the government. Substantive, on the other hand, can challenge the law on the grounds that it violates fundamental rights even if the procedure is otherwise fair. This is where the level of evaluation comes into conflict.

If the curfew law is found to violate certain fundamental rights, then strict scrutiny is applied, and the law can be found unconstitutional even if the procedure is just. If, however, the court does not find that minors have a fundamental right against a government imposed curfew, then a rational-basis test is used and the government must only demonstrate that they have a compelling interest and that the law is not vague and does not target groups unfairly. The lack of an answer to this fundamental legal question has made the constitutionality of curfew laws

difficult to decipher.

This issue is further clouded by the uncertain constitutional standings of minors in general. Severe encroachments of minor's civil liberties have been tolerated that would be clear violations if applied to adults. One example of this would be searches of person and vehicle at schools without the procurement of a warrant to do so. Minors are not afforded the same protections because they are often not viewed as full citizens since they have not reached the age of majority. Thus, the amount of constitutional protections shrinks and the sphere of those seen with control over them expands. This sphere, however, lacks definitive bounds. It is unclear what level and entity of encroachment is permitted; from parents, government officials, police, teachers, administrators, and other adults in disciplining, rearing and otherwise coercing minors. Since there has been little clarity from the courts on the question of curfew laws, more action is needed by the courts in settling this issue in order to ensure that state and local governments are not passing legislation which is constitutionally defective. Ignoring the constitutionality of legislation simply because there is little mobilized opposition, and because the law is designed to make those that are not subject to the law view it favorably is not a valid response.

Constitutional Defects

Violation of civil liberties

Curfew laws suffer from a number of constitutional defects which make them unfit to serve as a policing tool, since they cannot be applied without violating protected civil liberties. Although curfew laws differ by city, and some have been modified to bring them within constitutional bounds, many are still vague making it unclear when behavior is criminal providing a lack of notice to those who believe they are practicing otherwise lawful behavior. There is also arbitrary enforcement of curfew laws which violates principles of legality and

weighs against the enforcement of statutes that delegate policy matters to public officials on a subjective basis because this leads to uncertainty of when criminal sanctions will be imposed. A statute can fail either because it fails to provide notice of the activity to be criminalized, or because it allows for arbitrary and discriminatory enforcement (*Chicago v. Morales* 1999).

Some curfew laws impinge on the First Amendment rights of minors to free speech. Minors are unable to assemble peacefully and express their freedom of opinion and movement for protests, ceremonies, movies and other events which are not otherwise considered criminal, but which have been criminalized if they take place after a certain time. As noted, this deficiency has been rectified in some ordinances following *Nunez v. San Diego* (1997), but remains intact in many ordinances.

Allows a cause for search and seizure

These laws also violate the Fourth Amendment rights of minors against unlawful search and seizure. Under the guise of a curfew violation, police can stop and detain anyone they believe to be in violation of curfew. Judging the age of someone will require an imperfect guess by police officers and will inevitably subject those who look young enough to being detained by police officers in order to request identification and verify age. The officer will have no way to definitively know if the person in question is in violation until the stop has been made. The law will also give officers the means to stop people who they want to check out, even though they otherwise have no justification or reasonable cause to do so. Once the stop has been made, however, a search of the vehicle or person may be made, even though the original reason for the stop was under false or incorrect pretenses.

Impact of Curfew Laws on Constitutional Rights

Graying the line between what is an acceptable stop, and what is an unlawful search and

seizure is further complicated by the fact that a dirty search that turns up nothing will often not be reported, whereas a dirty search that turns up more serious unlawful behavior is likely to be picked up by the media and will fulfill the role that the feel good law was meant to serve. If a person's constitutional rights are violated by an unlawful search, or more infringements occur after the initial citation for curfew, this will often go unreported since it will require a great deal of time and effort to ensure that the complaint is handled. This is in addition to the fact that most people do not know or understand the channels for filing such complaints. If the search turns up unlawful behavior then the offense becomes difficult to fight in court because courts will often be deferential to the police officer's judgment (since he was in this case correct) and find that he "acted in good faith" while conducting the search. As far as the unaffected public is concerned, the officer's judgment of "acting in good faith" then serves in place of constitutional protections. Thus the media and courts create a type of selection bias where only searches that turned up more severe unlawful behavior are heard and other searches which turned up nothing, since most people would be unwilling to put forth the time and money to mount a case, go unreported and unheard.

Parental Rights and Government Interference: Making choices regarding one's own children

Curfew laws also impinge on the due process rights of parents to rear their own children. Legislators and law enforcement step in and dictate what is appropriate for their children. Some interpretations of the privacy rights to be found in the Ninth Amendment also justify a protection for parents in raising their own children.

Conclusions

Regardless of the level of scrutiny used, curfew laws must inevitably fail on procedural grounds since a group, minors, are targeted and discriminated against by the law. Otherwise

non-criminal behavior is criminalized, leading to many minors who would have been conducting legal activities prior to the law's passage, now being criminalized to root out behavior that they were not exhibiting in the first place.

Other justifications are made on the grounds that curfew laws protect minors from crime from others. If the state wishes to justify the law by appealing to a minor's safety, it must demonstrate that curfew laws are actually effective at keeping minors safe, appealing to a past tragedy does not demonstrate *prima facie* that safety is enhanced. This issue is usually emotionally clouded since the enactment of curfew laws usually follow an event which follows the pattern of moral panic, where a minor is involved in a violent act as either the perpetrator or the victim. The court may accept the state's reasoning for a compelling interest even where no evidence is presented that the curfew law would be effective in stopping the situation from occurring again.

It would appear that many times local and state administrations pass curfew laws as a typical moral panic and follow Cohen's (1973) deviancy amplification spiral, without demonstrating that the rational basis test can be passed and ignoring completely whether strict scrutiny can be overcome.

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