

An Argument Against the Justification of Paternalistic Laws in the United States

by

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Abstract

In this thesis, I propose a framework through which laws may be analyzed to give a base-level judgment of the law's justifiability. According to this framework, a law must be outward-facing, motivated by something other than personal morality or religious ideology, and have a punishment equal to the action it prohibits to be justifiable. I then use this framework to analyze several laws classified as paternalistic in nature throughout the United States. First analyzed is cannabis prohibition laws, which fail all three tenets of the framework and is thus deemed unjustifiable. Next analyzed are seatbelt and motorcycle helmet requirements, which are also marked unjustifiable. Finally, coercive censorship is examined through the framework, also being rated unjustifiable. After using the framework to argue against the justification of these laws, I then employ the framework to show how mask mandates during the COVID-19 pandemic are justifiable.

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INTRODUCTION

In the context of the United States legal system, a law is considered paternalistic in nature if its enforcement limits the choices of citizens with the intention of either protecting citizens from the consequences of their own actions or maintaining a moral society (Eskridge, 2002; Wynia, 2018). Paternalism has been present in the legal system far longer than the United States federal government has existed, with some paternalistic laws, such as prohibition of same-sex marriage, originating in the American colonies (Eskridge, 2002). Paternalism in politics and the legal system has been decried by many philosophers, scholars, and authors for centuries (Huemer, 2013; Jefferson, 1819; Locke, 1689; Mill, 1864; Nozick, 1974; Pettit, 2012; Rand, 1964; Spencer, 1851).

In the modern political landscape of the United States, several paternalistic laws are still enforced in modern times. Cannabis, a psychoactive drug with minimal risks and harms to users (Pletcher et al., 2012), has been prohibited in many states for several years. Motorcycle helmets and seatbelts, despite being generally positive things to use, are coercively pushed onto those who choose to go without. Forced censorship of media, whether to maintain some morality or to prevent potentially psychologically damaging materials from being released, still persists despite loosening over time (Venable, 2019).

The current well of anti-paternal literature is strong but splintered; each work's argument seems to exist independent of other anti-paternal works and each work seems to aim for a different goal. Through completion of this thesis, I hope to not only contribute to furthering the strength of this portfolio of literature, but also to provide a comparatively simple framework through which future works can begin crafting more complex frames and analyzing more laws. As such, I present this thesis.

THESIS STATEMENT

This thesis will propose a framework to analyze laws and determine if they are justifiable according to the conclusions of several significant philosophical works. The primary focus for applying this framework is analyzing laws of a paternalistic nature; that is, laws that prohibit or require actions with the intention of protecting an individual from the consequences of their own actions or with the purpose of maintaining a moral society.

This thesis will also look at the current state of the paternalistic laws of cannabis prohibition, motorcycle helmet requirements, seatbelt requirements, the coercive censorship of potentially offensive audiovisual material, and COVID-19 mask mandates.

CHAPTER I

Definitions

Prior to constructing an argument, defining terms related to this topic serves to clarify any ambiguity over common terms and contextualize the wording I use in this thesis. Further, these definitions should serve to build a solid foundation from which I can build an argument.

Actor

The term “actor” as used throughout this thesis refers to one who is performing an action. When discussing marijuana use, the actor is the one using the marijuana. This term will not refer to the profession.

Paternalism

Clarification and expansion of the definition of paternalism is beneficial to understanding the arguments in this thesis. In a previous essay, I defined paternalism as: “a hierarchical superior or authority figure limiting or influencing the physical, psychological, interpersonal, cultural, social, professional, or political choices of a hierarchical subordinate; symbolically similar to the relationship between a parent and offspring” (Locke, 2019, pp. 3-4). This definition is the most suitable for the scope of this thesis.

The Non-Aggression Principle

The Non-Aggression Principle is the belief that threatening or initiating coercion to enforce a moral vision or to attain goals is wrong (Jefferson, 1819; Locke, 2005/1689; Rand, 1964). The basis of the Non-Aggression Principle, a core belief to many American Libertarians, causes most who subscribe to the ideology to be anti-paternalism, as the

government uses force to administer a vision of morality and to attempt to protect citizens from the consequences of their own actions through paternalistic laws (Reid, 1994).

While this thesis is not necessarily an argument in favor of libertarianism, there is much value to be found in utilizing philosophical literature of a libertarian nature and the predominantly-libertarian Non-Aggression Principle to craft this thesis.

Arbitrary

For the term “arbitrary”, as it is used in this thesis, I will be using the Merriam-Webster definition and tweaking it to fit more within the context of this thesis. Merriam-Webster (n.d.) defines arbitrary as: “based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something.” By making some minor context changes, I define arbitrary as “an additional condition or occurrence that is not directly caused by the action to which it is connected.” Further explanation of this definition, along with an example, can be found in the two following sections.

Arbitrary Risks. Defining arbitrary risks is a necessity to prevent confusion. Arbitrary risk is additional risk that is taken on by performing an action that is not caused by the action itself. One of the best examples of paternalistic laws to demonstrate arbitrary risks is the requirement of wearing a helmet when riding a bicycle, which is a law in 22 states and over 200 local ordinances (Bicycle Helmet Safety Institute, 2019). Through the example of bicycle helmet requirements, the additional, unnecessary risk caused by paternalistic laws is exemplified; if one rides their bike for five miles without a helmet, they are putting themselves at risk of harm. If one rides their bike without a helmet, but now the police can give the helmetless rider a fine, the rider is now at additional risk.

Now, not only does this person have the risk of falling off their bike, they also have the added arbitrary risk of a fine.

Arbitrary Harms. Similarly, an arbitrary harm is harm that comes from an outside influence unrelated to the action, not because the action itself caused any harm. Once again, the example of bicycle helmets demonstrates this term well. If one rides their bike for five miles without a helmet and does not fall, they are not harmed. If one rides their bike for five miles without a helmet and does not fall, but a law enforcement officer stops the rider and gives them a fine, they are harmed. The actual action of not wearing a helmet caused the rider no harm; interference with their free-will decision to ride without a helmet is the only harm in this situation.

Literature Review

Many significant philosophers and authors of various political ideologies have proposed arguments against paternalistic laws. Two central themes are common amongst the arguments: first, it is unjustifiable for any individual, organization, or government to initiate force to restrict the freedoms of another (Gert et al., 1976; Huemer, 2013; Jefferson, 1819; Locke, 1689; Mill, 1864; Nozick, 1974; Pettit, 2012; Rand, 1964; Spencer, 1851, Wasserstrom, 1971). Second, the only time force is justified is when it is used to either prevent an individual or group from harming another or in self-defense against an external initiation of force (Huemer, 2013; Locke, 1689; Mill, 1864; Rand, 1964; Spencer, 1851; Wasserstrom, 1971). Accompanying these central principles are several additional propositions. To justify any law, one must justify the use of coercion to enforce it (Huemer, 2013). Without coercion, a law serves no purpose and has no effect; an individual could choose to disobey the law with no consequence due to the lack of

incentivization or threat to obey. Further, laws that prohibit free-will actions of an individual are a product of hierarchical elites enforcing their will upon subordinates, which leads to rights violations (Jefferson, 1819). Violating the rights of another is not justifiable unless the violation occurs in self-defense or to prevent further rights violations (Goldman, 1990; Huemer, 2013; Locke, 1689; Mill, 1864; Rand, 1964; Spencer, 1851). Additionally, laws that create arbitrary risks when one is acting alone and autonomously are unjustifiable and have no place in a free society (Pettit, 2012). Since violating one's rights is only justifiable in self-defense or to prevent other rights violations, enacting laws, like paternalistic laws, that prohibit free-will decisions, which requires coercion to enforce and will produce arbitrary risks, is not justifiable.

CHAPTER II

Theoretical Framework

To argue against the justification of paternalistic laws, I will be conceptualizing a framework of three requirements for a law to be justified. The requirements proposed herein are crafted through logical reasoning and backed by literature. This framework, nor the requirements within, was not crafted with the intention of being an ultimate determiner of a law's justification, but instead to act as a starting point for argumentation about a law's justification, providing compelling reasons why certain laws, as will be analyzed in the following chapters, are not justifiable. Further, two exceptions to this framework are necessary to cover herein as they provide routes to justify laws in certain circumstances that would otherwise be considered unjustifiable by this framework.

Requirement I: A Law Must Be Outward-Facing

To be a justifiable law, a law must be outward-facing, meaning it protects one or more non-acting people from the actions of actors. If a law is outward-facing, the arbitrary harms and risks can also be justified, as they are attempting to stop an actor or actors from infringing on the rights of one or more external recipients (Locke, 2005/1689; Mill, 2004/1859; Nozick, 1974; Rand, 1964; Spencer, 1851, Wasserstrom, 1971). To demonstrate this, arbitrary risks and harms are justifiable in the case of robbery, as the arbitrary risk of being caught and put in prison helps to dissuade potential robbers (NPR, 2013), and the arbitrary harms when caught help to equalize the harms the robber caused and received. Further, the arbitrary harm of prison for robbers helps stop repeat offenses, justifiably protecting others from the robber's potential future actions.

In the context of paternalism, or inward-facing laws, the law just furthers the risks and potential harms of performing an otherwise free-will decision (Wasserstrom, 1971). Arbitrary risks and harms are only justified when they are used to stop one from harming or infringing upon another's rights; when they are used to stop one from his or her own free-will decisions, they are not justified. Peoples' free-will decisions are now made even more risky by an arbitrary risk of fine if caught breaking these laws. The laws are not preventing bicycle riders from harming others and only serve to increase the risk and potential harm of their rides. In the end, no one is made better off in either terms of reduced risk to their life or livelihood or in society's function as a whole; only the actor is affected by the law, and is placed in a riskier, potentially harmful position. As such, inward-facing, or paternalistic, laws are not justifiable.

Laws can be both outward and inward-facing simultaneously, such as speed limit laws, which attempt to protect both the individual driver and those around them from the consequences of a high speed crash (National Highway Traffic Safety Administration, n.d.). Laws which fall into this category are to be treated like outward-facing laws, since they still fulfill the requirement for coercion as mentioned in the literature review in Chapter I in that these laws protect others from the malicious or foolish actions of actors.

Requirement II: A Law Must Not Be a Product of a Politician's Personal Moral Code

Second, a justifiable law must not be enforcing a personal code of morality (Wasserstrom, 1971). A law must not enforce personal morality because personal morality is primarily subjective (Harman, 1978). Since laws are supposed to apply to everyone, the vast number of different personal moral codes, religious convictions, cultural traditions, etc. that exist within one holistic culture makes using coercion to force

one particular moral code not justifiable. One of the largest current debates around morality in law is that of abortion laws (Groome, 2017); one person may find any abortion abhorrent while their neighbor may find any bans on abortion abhorrent. This fundamental incompatibility in personal moral codes makes it incredibly difficult to justify laws that enact a personal moral code, especially if that code is based on or heavily influenced by religion.

Religion, specifically Christianity, and the United States government have maintained tight connections and reciprocal influence on each other for hundreds of years. This is in spite of several founding fathers, especially Thomas Jefferson, expressing a desire to disconnect the church from the government.

In a letter to the Danbury Baptist Association, Jefferson (1802) expressed his beliefs:

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate ... that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church & State.

Jefferson was not alone in this sentiment. James Madison was very influential in helping Jefferson’s Act for Establishing Religious Freedom pass in the General Assembly in Virginia (Library of Virginia, n.d.). To better fulfill this precedent, and to prevent the infringement of individuals’ rights to choose to not associate with religion, laws must not be passed that use religious backing to determine what acts are prohibited or required.

My earlier use of the term “personal” in “personal morality” is very deliberate. Certain moral decisions are shared nearly universally. For one, I argue that it would be incredibly difficult to find a normally-functioning adult human who believes non-self-defense killing, or murder, to be morally acceptable. Further, practically everyone can

agree that stealing money from a homeless person is morally reprehensible. As such, laws that prohibit nearly universally accepted moral codes, even if they fail the first requirement of being outward-facing, can theoretically be justified.

Requirement III: Punishment for Breaking a Law Must be Equivalent and Reasonable

The third and final requirement for a law to be justified according to this framework requires looking at the comparative morality of its enforcement versus the action it prohibits or requires. The morality of enforcing a law must be equal to the morality of its enforcement or consequence. If a person puts another in harm's way by pulling a gun on them, then a law enforcement officer or a well-intentioned passerby pulling a gun on the aggressor can be morally justified (Goldman, 1990; Huemer, 2013). Conversely, if a person makes a free-will decision to smoke weed, then the comparative morality of fining them significantly and throwing them into jail for some time is not morally justified. Comparatively, throwing one in a cell for a year is in no way morally superior or even equal to the act of smoking weed.

The precedent for this requirement existed as far back as 1791 with the ratification of the Eighth Amendment to the United States Constitution, which states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" (U.S. Const. amend. VIII). Despite several problematic and unjust paternalistic laws being enforced at the time of its ratification, the principle found within the eight amendment serves as a solid argument in favor of balancing the enforced consequences of breaking a law with the transgression the law itself is attempting to prohibit or require.

Exceptions to this Framework

Although this framework was conceptualized to be as encompassing and flexible as possible given the constraints and reasonable expectations of this thesis and its author, two notable exceptions must be covered before moving on and applying this framework.

Exception I. Paternalism as argued in this thesis does not refer to laws that protect children or minors. Children are largely incapable of understanding the consequences of their actions and procuring protective gear, such as bicycle helmets, so laws requiring parents to take reasonable steps to protect their children, such as acquiring helmets and making their children wear them, can be justifiable (Locke, 2005/1689). The law is protecting the children from their parents' irresponsible actions or inaction. This distinction of enforceable age changes the law from inward-facing to outward-facing. To briefly exemplify, a law requiring a mentally well adult to wear a bicycle helmet under penalty of fine would not be justifiable by this framework, but a law requiring bicycle riders under 18 to wear helmets can be justifiable by this framework.

Exception II. An additional exception is found when applying paternalistic laws to protect adults with mental disabilities; specifically, mental conditions that either influence their judgment or do not allow them to comprehend the consequences of certain actions. Adults with these conditions should have some form of protection, and, given the large number of circumstances, enforcement of laws that prohibit potentially harmful behaviors can be justified for those who work with the mentally ill. This exception serves essentially the same function as the first, allowing laws to exist where enforcement provides a certain level of protection for vulnerable, incapable people.

CHAPTER III

Cannabis Laws

In the modern political landscape, few paternalistic laws are as significant or as widespread as cannabis regulation laws. My rationale for continuing to use the cannabis laws for applying the principles in this thesis, despite their near over-analysis in literature (American Civil Liberties Union, 2020; Gavrilova, 2019; Huemer, 2013; Kilmer et al, 2014; Muller et al. 2017; Wynia, 2018; Yakowicz, 2017), is that I am aiming to take a more holistic and nuanced approach. Removing one of the most common and nuanced arguments from my thesis would be antithetical to that goal. As such, focusing the first application chapter of this thesis on cannabis laws as they exist in two representative states and applying my proposed theoretical framework to said laws is most appropriate.

Status Quo

In the United States, cannabis in any form is illegal in eleven states and is heavily and inconsistently regulated in many of the states where it is legal (DISA, 2020). To begin this analysis of cannabis laws, I will be analyzing two bordering states' cannabis laws: California, which has legalized cannabis recreationally and medicinally, and Arizona, where cannabis in any form is illegal to cultivate, possess, sell, or use. In California, the Compassionate Use Act (1996) legalized medicinal use and cultivation. The Adult Use of Marijuana Act (2016) further made cannabis available in California by legalizing recreational use for those over twenty-one years old. Conversely, in Arizona, possession, sale, cultivation, and use of cannabis are felonies, punishable by a minimum \$1000 fine and 4 months in jail and maximum \$150,000 fine and 12.5 years in jail based on quantity possessed, cultivated, or sold (Az. Stat. § 13-3405, 2005; NORML, 2019).

Arbitrary Risks

Cannabis laws add arbitrary, unnecessary risks to someone acting otherwise relatively risk-free. Those who wish to get high for enjoyment through recreational usage of cannabis are put at risk of losing their financial stability due to fines and their freedom to jail time.

Cannabis usage itself is not overly harmful to the user, with only very minimal detriments to adults who smoke it regularly (Pletcher et al., 2012; Preedy, 2017). Several pieces of research have even found health benefits to both recreational and medicinal usage of cannabis, such as diminishing the severity of or even preventing PTSD attacks (Muller, 2017) and reducing the growth of cancerous tumors (Preedy, 2017). Conversely, there are many legal substances that are far more detrimental to health than cannabis, such as tobacco. In one study, marijuana was shown to have no significant impact of pulmonary functioning, but tobacco was shown to significantly damage pulmonary functions (Pletcher et al., 2012). These findings reveal two arguments. First, the claim that marijuana laws are in place to protect users from the harm of their actions is not logical nor justifiable. If proponents with that claim truly want to protect smokers from the consequences of their actions, tobacco would be a much better target on which to focus their efforts. Second, these findings show that the risks of using cannabis are almost completely arbitrary, coming nearly exclusively from the risk of fine or jail time. This is further evidence that these laws are unjust (Pettit, 2012).

Applying the Framework

One's private use of cannabis, whether recreationally for one's own enjoyment or medicinally for one's own health, does not harm anyone beyond the actor, often not even

harming the actor as previously covered. Prohibiting personal, private use of marijuana fails the first requirement of the framework. However, an important distinction to make is the difference between private use and public use. Just like other influential substances, such as alcohol, marijuana use should be prohibited when driving a car or operating other potentially dangerous machinery. When used in these circumstances, the actor is putting those around themselves at increased levels of risk and can potentially cause massive harms. Just like the annoyance and potential second-hand health issues caused by public tobacco smoking (Pletcher et al., 2012), public smoking of marijuana does not exclusively affect the actor. As such, prohibition of public marijuana smoking, similar to the regulations of smoking tobacco in or near certain buildings, can be justified.

As for the second requirement, cannabis prohibition laws are frequently argued to be necessary to maintain a moral society (Wynia, 2018), at least by the moral code of Biblical Christianity. Some Christians argue against the legalization of marijuana through use of verses from the Bible, such as 1 Peter 5:8, which states: “Be sober, be vigilant; because your adversary the devil, as a roaring lion, walketh about, seeking whom he may devour” (*King James Bible*, 1769/2020). Leadership in the Southern Baptist sect of Christianity urged followers to vote against both recreational and medicinal legalization of cannabis due to the harm they believe it will cause in communities, leading young people astray from good, moral lives (Strode, 2016). Leadership in the Church of Jesus Christ of Latter-Day Saints sent out letters to followers, urging them to vote against recreational marijuana legalization due to devaluing the sanctity of human life (West, 2016). This stipulation causes the prohibition laws to fail the second requirement due to the United States’ large reliance on religion at its passing of said laws.

When defining and laying out the framework in Chapter II, I used the example of cannabis laws and punishing actors for breaking the laws to argue that a punishment for breaking a law must match the risk or harm being avoided by its enforcement. As such, a full explanation here would be redundant. Briefly, no punishment can be justified for an actor's private use of cannabis as no one is harmed or at risk from said usage.

Additional Arguments

Using only the theoretical framework to complete my analysis and arguments against cannabis laws is limiting. There are more propositions to make.

Ineffectiveness of Cannabis Laws and the Black Market. One argument that is largely unexplored by philosophers arguing against paternalistic laws is the ineffectiveness of the laws. The laws prohibiting the possession, usage, or cultivation of cannabis have little effect on the amount of cannabis that is used or sold, which makes the laws futile, and further shows the lack of justification for the arbitrary risks. Studies show that annual black-market cannabis sales exceeded an estimated \$40 billion USD from 2000 through 2010 (Kilmer et al., 2014). In 2016 alone, \$46.4 billion USD worth of cannabis products were sold illegally (Yakowicz, 2017). By banning the sale of cannabis in forms such as recreational marijuana, the government has unintentionally created a deeply ingrained, violent, and prosperous black market (Gavrilova et al, 2019).

This black market is incredibly powerful and is responsible for a significant amount of violent crime. One study showed that legalizing medical marijuana, which weakens the black market, drastically reduced the amount of violent crime in the states where it was legalized (Gavrilova et al, 2019). In summary, paternalistic cannabis prohibition laws have created a violent black market, and one effective solution to

debilitate the black market and reduce violent crime is to repeal cannabis prohibition laws.

Inconsistency of Cannabis Laws. The inability of paternalistic laws to succeed in their goals is exacerbated by the inconsistency of the laws across borders. Crossing lines separating districts and states may mean the difference between a legal action and an illegal action. Recall that, in California, recreational use of cannabis is legal for individuals over twenty-one, and that, in Arizona, recreational use of cannabis is a felony, punishable by 4 months to 12.5 years in prison and a fine of \$1000 - \$150,000 USD.

To demonstrate this inconsistency, imagine an average, non-violent, law-abiding citizen, who, for the sake of this example, is named Roy. Roy is peacefully smoking marijuana in his California home, which is about a mile from the California-Arizona border. As of right now, Roy is committing no crime. Next, Roy decides to take a walk through the forest behind his house for an outdoor smoke, which he enjoys. Still, Roy is not committing a crime. Roy walks through the forest for a while and accidentally crosses the border into Arizona without knowing. Through this simple, unintentional act of crossing a border, Roy just became a felon. If a law enforcement officer saw Roy while beyond this imaginary line, Roy could be fined \$1000 or more and thrown in a prison cell for four months or longer. By crossing the imaginary line from California to Arizona while smoking marijuana, average law-abiding citizens inadvertently become felons. I propose that, for a law to be just, it must be equally applied to the public everywhere within a nation. Without equal application, there are no equal rights. Both a California citizen and an Arizona citizen are American citizens. Regarding cannabis laws, though, one has more right to their choice of free time activity or medicinal treatment. People in

Arizona should not be fined and incarcerated for an act that is celebrated a few miles away in California.

Comparative Morality. My purpose in this subsection is not to argue whether using cannabis products recreationally is moral or immoral; instead, I will compare the proposed immorality of recreational cannabis from opponents of legalization with the immorality of the punishments administered. Recall that many of those in favor of laws prohibiting cannabis cultivation and usage have used arguments that cannabis is immoral in any capacity or use (Wynia, 2018). Conversely, I propose that taking away one's freedom and throwing them in a cell for several years because they grew a couple cannabis plants to enjoy their free time is far more immoral. Further, preventing an individual with PTSD from using cannabis due to your moral objection is incredibly immoral. The jail time cannabis users serve prevents them from actively participating in their family and incarceration remains on their record, which can make it much more difficult to get and keep a job once out. These consequences do not match the original action; in fact, for non-violent marijuana users, I propose that no punishment can be justified against them, as they have not harmed anyone nor violated the rights of another.

CHAPTER IV

Motorcycle Helmets and Seatbelts

The application of the theoretical framework to these two laws is so similar that combining them into one chapter is beneficial to the concise completion of this argument. Although the discussion and argumentation of an justifiable alternative to enforcement of these laws is outside the scope of this thesis, I propose that passing a resolution encouraging the public to wear seatbelts and helmets when travelling is superior to threatening compliance through risk of fine.

Status Quo

States have many different guidelines for enforcing motorcycle helmet requirements, such as riders under certain ages, only operators, or only passengers. Currently, twenty states require anyone, regardless of age, to wear a helmet while riding on a motor-driven cycle, whereas nineteen states require any riders under 18 years old to wear a helmet while riding on a motorcycle. Alaska requires all non-operating passengers to wear a helmet and Arizona requires all motorcycle operators to wear a helmet. Arkansas, Florida, Kentucky, Michigan, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah require all riders under twenty-one to wear a helmet, with Florida and Michigan adding a clause that riders must have at least \$20,000 in insurance to not wear a helmet. Illinois and Iowa have no law establishing a requirement for helmet wearing when riding on motor-driven cycles (DMV.ORG, n.d.).

Exact enforcement details for seatbelt laws are a bit more complicated. Individual states make requirements based on several different factors, such as age, height, weight, seating position, vehicle type, and experience, to determine which operators and

passengers are required to wear seat belts. Many states require operators to wear adult safety belts once they turn the age where they are eligible to receive a license, such as North Carolina, Oregon, Tennessee, Utah, and Washington. Other states require all legal adults, that is, those over 18 years of age, to wear adult safety belts, such as Iowa, New Mexico, Nevada, Pennsylvania, and Rhode Island. New Hampshire is the only state to have no law establishing a requirement for seat belt wearing (Insurance Institute for Highway Safety, 2020).

Applying the Framework

Both motorcycle helmet and seat belt laws fail the first requirement of being outward facing. An actor's choice to operate or ride in a vehicle without a seatbelt neither harms nor elevates the risk of harm for anyone other than the actor. Likewise, an actor's choice to operate or ride on a motorcycle without a helmet neither harms nor elevates the risk of harm for anyone other than the actor. The exceptions for children and adults without normal mental function also applies strongly. An adult making the conscious decision to drive without a seatbelt or ride a bike without a helmet likely understands the consequences of their actions should a wreck or other occurrence happen, and can weigh the risks between wearing one and not. Conversely, children generally do not have the ability to comprehend the consequences of not wearing a seatbelt or helmet and are usually more focused on their current comfort than long-term wellbeing. Similarly, adults without normal mental functioning are often unable to grasp the gravity of their choice not to wear a seatbelt or helmet. In summation, if one can understand the risks to their own health and safety when choosing to wear a helmet or seatbelt, one should not be fined for choosing to go without.

Although I argue that both motorcycle helmets and seat belts are good things to wear and they provide benefits far superior to the harms they cause, I still argue that it is unjust to force someone to wear one. Yes, I do believe everyone should wear one, but I will not advocate the use of coercive tactics, such as fines, to see that belief enacted. To recall Thomas Jefferson's (1802) letter as cited in Chapter II: "the legitimate powers of government reach actions only, & *not opinions* [Emphasis added]"

For the second requirement, seatbelt and helmet laws demonstrate the fact that not all paternalistic laws are enacted with the intention of creating or maintaining a moral society. The primary reason for their enactment is neither morality nor religion, but instead a paternal desire to protect others from their own actions (Conly, 2013). As such, application of the second requirement is neither needed nor possible here.

Applying the third requirement to seatbelt and motorcycle helmet laws is simple; no one is harmed or put at risk by the action beyond the actor themselves. Further, application to the very similar bicycle helmet laws in Chapter II is equally applicable here; the only harm done to an actor who is caught travelling without a seatbelt or helmet, and who does not crash, is the fine placed on the actor by a law enforcement officer. Any punishment for a free-will decision to not wear a seatbelt or helmet is not justifiable.

Additional Argument: The Inconsistency of These Laws

As laid out in the previous Status Quo subsection, seatbelt and helmet laws vary wildly across states and districts. Each legal code is pedantically precise on what constitutes lawful versus unlawful seatbelt and helmet use. In Oklahoma, all passengers who are nine years old or older and riding in the front seat of the vehicle must wear a seatbelt (Oklahoma Mandatory Seat Belt Use Act, 1987). In Texas, which borders

Oklahoma to the south, the legal code for seatbelt use requires seatbelts to be worn by all passengers seven years old and younger who are fifty-seven inches tall or taller, and by all passengers, regardless of seat, eight years old or older (Insurance Institute for Highway Safety, 2020). These precise measurements of age, height, and more needlessly complicate interstate travel.

Motorcycle helmet laws, despite not being quite as varied as seatbelt laws, still have much variation in their definitions of lawfulness. In Arkansas, only those twenty-one years old or younger must be wearing helmets when on a motorcycle (Ark. Code Ann. § 27-20-104, 1977). If a motorcycle crosses the eastern border and enters Tennessee, everyone on the motorcycle must be wearing a helmet, regardless of age (Tenn. Code Ann. § 55-9-302, 1967). This distinction in legality can quite possibly cause issues for many interstate travelers. Should a twenty-five-year-old travel on a motorcycle from Arkansas to Tennessee without a helmet, they would inevitably be changing the legal status of their action mid-journey. Such an issue should not exist.

CHAPTER V

Federal Media Censorship

The forced censorship of explicit media in the United States is nothing new. Just about as long as audiovisual media have been enjoyed both informationally and recreationally and audiovisual devices have received broadcasted media in America, there has been some kind of enforced censorship that attempted to prevent potentially offensive, or, as the federal law calls it, “obscene, indecent” (Broadcasting obscene language, 1989), material from being broadcasted. Potentially offensive content as used in this chapter will refer to stronger language, such as “fuck” or “shit”, verbal and visual references to sexual intercourse and genitalia, and strong visual violence. This type of censorship is summed up well in Robert Heinlein’s *The Man Who Sold the Moon* (1950): “The whole principle is wrong; it’s like demanding that grown men live on skim milk because the baby can’t eat steak” (pp. 188).

Status Quo

The Federal Communications Commission, or FCC as it will henceforth be addressed, was formed in 1934 to replace another regulatory body, the Federal Radio Commission (An act to provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes, 1934). Throughout its history, the FCC has ruled over the content it permits to be aired with an iron fist, slowly becoming more accepting and less strict. Intentionally used profanity was and is not allowed on American television broadcasting (Broadcasting obscene language, 1989), though enforcement of this prohibition has gotten more lax with time (Venable, 2019). Nudity in any form is also prohibited from airing on television in the United States

(Venable, 2019), though outlying examples do exist. These regulations have been put in place with many different sets of reasoning, the main of which being to maintain decency in programming and preventing the exposure of explicit, potentially damaging content to children.

Applying the Framework

The application of the first requirement to censorship laws as defined in prior subsections is more unique than the applications in Chapters III and IV. Instead of simply prohibiting or requiring the action of an individual actor, censorship laws aim to control the actions of groups of, what could be perceived to be, actors producing a product or service for consumption by millions of citizens. Due to this, one could easily view the law's control of someone other than the actors themselves as making censorship an outward-facing law, protecting the media consumers from the actions of the media producers. However, I argue that, although the direct result of these laws being enforced is action against the producers and not the consumers, the indirect result of their enforcement is limitation of one's free-will consumption of educational or recreational audiovisual media. Moreover, I also argue that the actions being prohibited cannot universally be considered harmful.

To fully consider whether censorship laws fulfill or fail the first requirement, deciding if the action of presenting media containing potentially offensive material constitutes harming another or putting another at risk. I believe this action can be marked as not substantively putting the consumer at risk or creating harm for consumers. First, producers passively present their creations, not actively forcing others to consume it, meaning that the role of actor is not the producer, but the consumer. Just because a piece

of audiovisual media exists, does not mean a consumer will necessarily come into contact with it. This tenet is further supported by the abundance of rating boards producing descriptors for media to warn consumers of potentially offensive or upsetting content, with many having access to filters that automatically block media with undesired content. Thus, with both the warnings about potentially offensive content being presented to consumers alongside the media itself and the wide availability of filters automating the process, the media consumer is the actor in regard to censorship laws, making the laws inward-facing due to their attempted protection of the consumer from the harms of being offended or upset by specific content.

Personal morality affects whether one finds specific words or expressions offensive. This effect can be seen in many various contexts, such as one's religious beliefs influencing what one considers offensive. Many Christians find the expression "Oh my god!" to be insulting, due to its use of "god" in perceived vain.

Supreme Court Justice James Brennan concisely summed up the influence personal morality and one's personal life experiences has on the level of offense one takes from use of certain words:

The words that the Court and the [FCC] find so unpalatable may be the stuff of everyday conversations in some, if not many, of the innumerable subcultures that compose this Nation. ... Today's decision will thus have its greatest impact on broadcasters desiring to reach ... persons who do not share the Court's view as to which words or expressions are acceptable and who ... express themselves using words that may be regarded as offensive by those from different socio-economic backgrounds (*FCC v. Pacifica Foundation*, 1978).

Due to the effect that personal rhetorical choices and life experiences have on determining whether or not a word or expression is offensive, I argue that personal

morality is the determiner in enforcing censorship laws. This causes the laws to fail the second requirement.

The third requirement is also more uniquely applied to censorship laws than the applications in Chapters III and IV. Unlike the examples in Chapters III and IV, breaking the laws of censorship is not dependent on the actor's actions, but on external producers' actions, none of which create direct harms or risks for anyone beyond the risk of the law's enforcement harming the producers. As such, punishing the producers for their non-harming actions is not justifiable; the producers have done no harm nor created significant risks for anyone besides putting themselves at risk of fine.

Exception I could create one potential issue with the framework's application if left unaddressed. I argue that Exception I can be satisfied by allowing the prohibition of "indecent" content as currently enforced, perhaps slightly refined, to continue being enforced on specifically designated networks intended for children. As previously quoted: "The whole principle is wrong; it's like demanding that grown men live on skim milk because the baby can't eat steak" (Heinlein, 1950, pp. 188). The existence of children, who are often easily negatively influenced or upset, should not mean consenting adults should have limits placed on what content they can consume both educationally and recreationally. Further, with the near-universal parental controls on common televisions in the modern day and the already existing rating agencies providing breakdowns of potentially offensive content for every piece of broadcasted media, the need to block potentially offensive content is inherently minimized in the status quo.

CHAPTER VI

One Notable and Relevant Exception

There is one type of law that has been enacted in response to the COVID-19 Coronavirus outbreak that I frequently find defined as paternalistic in nature: the requirement for facial coverings, referred to as “masks” going forward, to be worn in public. Many argue that these mandates are a product of a despotic, authoritarian government going mad with control over citizens (Kirby, 2020). I argue this is not the case - that mask mandates are not paternalistic - thus excluding them from an automatic unjustified ruling from the framework in this thesis. To further demonstrate this, I apply the framework to mask mandates in an upcoming subsection.

The COVID-19 Pandemic

The Coronavirus pandemic, which has infected tens of millions, killed millions, and disrupted the lives of practically everyone around the globe, has created many new norms for society and the governmental policy regulating individuals’ daily actions. Even now, as I sit here typing this thesis 269 days after the first confirmed case of the Coronavirus in the United States (TEGNA, 2020), scientific inquiry into the virus’s exact abilities to spread from person to person and to be infectious under different circumstances is not universally agreed upon or documented satisfactorily.

Applying the Framework

Due to the large amount of unknowns about the spread of COVID-19, along with the inability for actors to automatically know if they are infected with the disease in a given moment regardless of symptoms, the choice to enter public places, such as

businesses, without wearing a mask can be considered putting others at unnecessary risk. This causes mask mandates to be outward-facing, passing the first requirement.

Similar to Chapter IV's application of the second requirement to seatbelt and motorcycle helmet laws, mask mandates pass the second requirement by not being a product of a coercively enacting moral codes or religious ideologies. Sure, some might potentially make arguments in favor of masks using religious ethics of caring for others, but this reasoning is not present in the enactment or enforcement of said laws.

In Idaho, a man was arrested after he sang without wearing a mask at a religious worship service occurring outside (Parke, 2020). Exact details as to whether the man was fined or jailed are not available, but seeing an arrest take place regarding violation of mask mandate shows that law enforcement officers have been granted the authority to make arrests. In Florida, another incident saw a 16-year-old high school sophomore with anxiety issues arrested after refusing to wear a mask at school (Associated Press, 2020). Again, exact details of the punishment are not available, but these incidents show that arrests are indeed being made for violating mask mandates.

As for the mandates themselves, certain areas have heavier punishments than others. In New York City, individuals who do not wear masks can be fined as much as \$1000 (Peñaloza, 2020). In Connecticut, mask order violations can be punished by a \$100 fine (Merchak et al., 2020). Minnesota's mask mandate places a petty misdemeanor and a \$100 fine on violating individuals, with business owners facing up to 90 days in jail and a \$1000 fine for not enforcing the mandate (Jokich, 2020). Such punishments, though harsh, can be justified due to the severity of this pandemic and the inability of individuals to guarantee that they are not harming or putting others at risk of the Coronavirus.

CHAPTER VII

Conclusion

Historically, paternalistic laws have been fought by many brave dissenters seeking a more accepting and free society. Time and time again, humanity has triumphed over paternalistic laws and progressed beyond the authoritarian control of societal morality as decided by the elite. In the United States, many prime examples exist of this trend away from paternalism and toward civic liberty. Slavery in the United States was finally ended in the 1860's after many black and white people alike fought and died to see the end of the practice. Paternalistic justifications for the continuation of slavery persisted for long before and even a while after its legal end. Many slave owners argued that their relationship with their slaves was like that of a parent and their child, the owner providing protection, food, and shelter for the slaves in return for their obedience and labor (Cole, 2005; Genovese et al., 2011). More recently, the Supreme Court's ruling in favor of marriage equality in 2015 ended another longstanding paternalistic law: prohibition of same-sex marriage. This law was argued to be in favor of protecting individuals from the, mistakenly believed to be real, increased risks of sexually-transmitted-disease transmission in same-sex sexual activity (Eskridge, 2002). Further, prohibition of same-sex marriage had thunderous support from religious groups throughout the country, who argued that same-sex marriage would diminish the sanctity of marriage. As was put in the landmark Supreme Court decision: "To the [opponents of same-sex marriage], it would demean a timeless institution if marriage were extended to same-sex couples" (*Obergefell v. Hodges*, 2015). Both of these civil rights violations

were ended through much determination and action by those who refused to live in a restrictive society.

The fight for civil liberties and against violating the rights of the individual continues. On a large, significant scale, paternalistic laws, such as cannabis prohibition, are still being used to throw hundreds of thousands of people into jail cells each year. Further, enforcement of cannabis prohibition brings up issues of racial inequality and questionable administration of law enforcement; with cannabis prohibition enforcement targeting black people, who are 3.64 times more likely to be arrested for marijuana possession than white people, even though usage of marijuana is similar between black and white people (American Civil Liberties Union, 2020).

On a much smaller scale, paternalistic laws are being used to nickel and dime citizens into funding local law enforcement departments. Bicycle helmet and seatbelt laws, though only carrying relatively small fines, like \$10 for seatbelt law violations in Arizona (Az. Stat. § 28-907, 1972), are still unjustifiable to enforce, as the laws create harms where no prior harm existed simply in attempt to protect actors.

Through completion of this thesis, I hope to contribute to this fight. Even if my contribution is small, I hope to inspire any downtrodden activists to continue in their fight against authoritarianism and dictation of the individual's life. Through continued work and support, humanity as a whole can refine our society and live lives free from outside coercion on our actions.

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