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The Criminalization of Walking

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My article is about two separate legal doctrines- anti-jaywalking laws and enforcement of child neglect laws to discourage children from walking anywhere. What do these doctrines have in common? Both discourage, and even criminally punish, walking, and both do so in the name of protecting the laws' victims, that is, pedestrians. In my article, I describe these policies, and criticize their safety justifications.

First, I'd like to talk about jaywalking. Before I argue my point, I'd like to begin by discussing the historical background of anti-jaywalking laws. The typical American might think that jaywalking laws are based on impartial decisions by experts. In fact, these rules are an example of special-interest politics.

Our story begins in the 1920s. Before then, streets were for pedestrians, and children routinely played in streets. But fast cars disrupted this status quo. During the 1920s, over 200,000 Americans were killed in traffic accidents, and the majority of these victims (at least in cities) were pedestrians. This led to a political backlash against the automobile; for example, some police chiefs proposed requiring auto companies to install speed governors limiting cars to less lethal speeds.

Since cars were attractive precisely because of their speed, such measures threatened the profits of automobile-related industries- not just auto companies themselves, but also gas stations, tire companies, oil companies and motor clubs (which were more political then than the AAA is today). These groups (or Peter Norton called them in his book *Fighting Traffic*, "Motordom") responded by arguing that streets should be for vehicles rather than for pedestrians, and that pedestrians were to blame for their own demise. They invented a term, "jaywalker." The term "jay" originally meant a hayseed out of place in the city. So a "jaywalker" was a pedestrian out of place in the city. They then lobbied the government to enact anti-jaywalking laws to get walkers out of the way of cars. For example, a Los Angeles auto club drafted a model traffic ordinance that included anti-jaywalking provisions, and persuaded the city council to pass the law in 1925. Today, such laws are universal. They generally require walkers to obey traffic lights and to cross at lights rather than in midblock. Violators are ticketed, arrested or even jailed. One extreme example occurred in the Atlanta suburbs in 2010; Raquel Nelson watched as her son was killed by a hit and run driver. Because the nearest traffic light was half a mile away, the family had crossed in midblock- so the state prosecuted Nelson for vehicular homicide.

So what? Why do we care? These laws create a variety of social harms. From a libertarian perspective, jaywalking laws are wrong because they are paternalistic- they punish people for endangering their own safety rather than that of others. From a public health and environmental perspective, these laws are harmful because they discourage walking. Jaywalking laws limit walking far more than traffic signals discourage motorists. For example, requiring pedestrians to use crosswalks or intersections limits them to only a tiny strip of the street, while drivers can use most of a street. Why is that bad? Because less walking means more driving, and more driving means more pollution, and that Americans are less physically fit. From a social equity perspective, jaywalking laws are harmful because they disproportionately harm minorities and the poor. Poverty-

level households are less likely to own cars than the average household; one-third of all poor black households (as opposed to about 8 percent of Americans) have no car. As a result, the poor are more likely to walk to work- 8 percent of commuters households earning under \$10,000, as opposed to 2 percent of those earning over \$200,000. So any law that discourages walking harms the poor more than the rest of us. And because fines are unrelated to ability to pay, jaywalking fines harm the poor more than the rest of us. \$200 means more to a minimum-wage worker than it does to a law firm partner. In addition, fines can lead to other harmful consequences, such as imprisonment for nonpayment.

Given these harms, I favor legalizing jaywalking. The traditional argument for jaywalking laws is safety; but this claim is specious for a variety of reasons. First, traffic lights may protect a walker from traffic coming head-on, but it doesn't protect her from cars making left and right turns. As a result, you can cross at a "walk" light and still be mauled by a car. Crosswalks on high-speed streets are so useless that the Federal Highway Administration actually opposes them. Second, to the extent that these laws discourage walking, they may reduce pedestrian safety because of the "safety in numbers" phenomenon. If there are very few walkers around, drivers are less likely to look for them. Third, places with lenient or no jaywalking laws tend to have lower traffic death rates. The UK has no anti-jaywalking laws, and yet their rate of pedestrian deaths from motor vehicles is less than half that of the USA. Similarly, in Massachusetts the fine for jaywalking is only \$1- and the pedestrian fatality rates for both Massachusetts and its biggest city (Boston) are well below the US average.

Similarly, government's war against child pedestrians limits walking. In the 1960s about half of American children walked to school; today, only 13 percent do so. Why? One reason is the legal system, as police, prosecutors, and child protection bureaucrats have come to protect constant parental supervision. So for example, one man in Ohio allowed his six-year old daughter to walk three blocks to a post office. Police arrested the child, and the state child protective services served the man with a complaint alleging child neglect, and sought to take the child from her parents. In Silver Spring, Maryland, a family allowed their 10 and 6 year old daughters to walk home from a playground; the children were held by police and CPS for five hours. CPS employees later threatened to remove the children if the parents did not sign a CPS-drafted safety plan, and attempted to frighten the children by telling them that "bad guys" were "waiting to grab you." So a parent who lets their child walk to school faces a risk of prosecution and even losing a child. These actions are based on vague laws prohibiting child neglect, which usually outlaw any conduct that bureaucrats think creates a risk of harm to a child.

These laws are typically based on safety- the idea that the world is a dangerous place for children, and that there is a child molester lurking under every bush. For example, one Arkansas police officer justified an arrest of a parent by saying "if you wouldn't want your child doing it, you probably don't need some other child doing it." But in fact, violent crime has decreased in recent decades. In 1980, 10 Americans out of every 100,000 were murdered; today, the murder rate is less than half that. In particular, violent crime against children has decreased by 77 percent since 1994. A parent who

wanted his child to be abducted would have to leave the child outside for 500,000 years before it would be likely to happen.

The argument for imprisoning children in their parents' cars is that any risk of victimization is too much. But punishing parents who let their children walk actually reduces public safety in a variety of ways. First, children who do not walk exercise less, and less exercise means worse health. In the last 30 years obesity among children has quadrupled. Second, parents who drive their children everywhere expose them to a risk of injury and death from car crashes; an American child is far more likely to die from a car crash than from an abduction by a stranger. Third, children may not even be safer from criminal victimization with their parents, because most violent crimes involve adults- and should a child be with a parent who is being victimized, the child might be harmed as well, or at least traumatized. So if child neglect laws are based on the idea that any risk is too much, we should force children to be on their own to prevent the risk that they might be killed when a criminal kills their parents – obviously an absurd result. Finally, a child is over 2000 times as likely to be taken from a family by Child Protective Services than to be abducted by a kidnapper. Such removal creates a risk of emotional damage to children traumatized by the loss of their parents, and may even be physically dangerous, because children in foster care are more likely to be physically abused than other children.

So what we can do about this? The problem is more difficult than that of jaywalking, because actual child neglect does occur, and so there is a good reason to have some sort of legal prohibition on child neglect. Current law in most states defines child neglect as omissions that create an unreasonable risk of serious harm. One option is to raise the legal bar for state intervention, defining parental conduct as child neglect only when the expected harm is grossly disproportionate to that of the alternative. But because such language fails to give bright-line guidance to police and bureaucrats, it might still be easily abused.

In fact, the federal government has already tried to rein in overzealous child protection bureaucrats, without much success. In 1989, Congress enacted the Child Abuse Protection and Treatment Act (CAPTA), which funded state efforts to prevent child abuse and neglect. The original version of CAPTA defined child abuse as any negligent treatment, causing a dramatic increase in children being removed from their homes. A few years later, Congress amended the law by defining child abuse as acts or omissions that present an imminent risk of serious harm. This vague language has not prevented abusive context by CPS bureaucrats.

Thus, a better option might be a “bright line” rule. For example, recent education legislation prohibits the federal government from prohibiting a child to travel to school by foot or bike when the parents have given permission. The federal government has never tried to do this, so this particular law is not very important. However, a state could draft similarly worded legislation, providing that state and local entities could not prohibit a school-age child from walking or biking to school, or punish parents for allowing this.

Both jaywalking and child neglect laws involve a broader issue of principle. As American society became ever more vehicle-dependent in the late 20th century, legislators, police and bureaucrats began to treat walking as exotic and dangerous, instead of as a normal part of American life. The laws that I have discussed are just examples of this attitude. In my article, I argue that this attitude and the policies it generates makes society less safe rather than more safe.