

Mandatory Motorcycle Helmet Laws in the Courts and in the Legislatures

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ABSTRACT

This paper reports the results of a legal analysis of mandatory helmet-use legislation. The status of headgear laws at the federal level and in each of the states was determined, and court decisions involving challenges to their constitutionality were collected and analyzed.

Helmet-use statutes were first passed by states in 1966. Enactment of such legislation was required of all states the following year; this was the result of a U.S. Department of Transportation regulation including headgear legislation in its mandatory safety program standards.

During the decade immediately following the promulgation of the Department of Transportation regulation requiring states to pass mandatory helmet-use statutes, opponents of those laws challenged their constitutionality in court. With a single exception, every state court of last resort that considered the issue upheld motorcycle helmet legislation as constitutional. A large majority of the lower courts that considered the issue likewise upheld their constitutionality.

Despite the overwhelming weight of judicial authority upholding headgear laws as a reasonable means of promoting the public interest, courts disagreed as to what that public interest was. Some courts stressed the welfare and unemployment payments as well as other social costs that would be reduced by helmet-use legislation. Other courts, however, chose to rely on a more direct public benefit--namely, the prevention of multivehicle crashes that could result from an unhelmeted motorcyclist being struck by a flying object and losing control of his vehicle.

Courts also considered a variety of other challenges--both substantive and procedural--to headgear legislation, and uniformly upheld the legislation against those claims.

In 1976, Congress passed legislation specifically prohibiting the Department of Transportation from withholding highway-safety appropriations from states that did not require motorcyclists and passengers aged eighteen and over to wear helmets. Since passage of that provision, some thirty states have repealed entirely or weakened their helmet legislation, and bills dealing with motorcycle headgear are being considered by legislatures in a number of other states. On the other hand, efforts to reinstate or strengthen helmet laws have been reported in states that earlier repealed or limited them. Arguments cited by legislative opponents of helmet legislation include many of those that were raised earlier, without success, in the courts. Those arguments--chief of which is that government should not protect an individual from the consequences of his own folly--possess social and political force; therefore, proponents of mandatory helmet-use legislation must be prepared to face them in the future. Future research into mandatory helmet-use laws should include continued analysis of legislative action on them; it should also attempt to determine the factors that influence legislators' decisions to retain, weaken, or strengthen these laws.

Whether states and municipalities may require motorcycle operators and passengers to wear protective headgear is an issue currently being debated in a number of state legislatures. The states have again become the arena of this debate following congressional passage in 1976 of a provision in the Federal Highway Act, which curbed the power of the U.S. Department of Transportation (DOT) to penalize states that did not enact mandatory headgear legislation. States still may, however, be subjected to penalties for not requiring persons under the age of eighteen to wear helmets.

Prior to the passage of the 1976 provision, the principal method of attacking headgear legislation was to challenge their constitutionality in court. Opponents' arguments typically began with an assertion that helmet-use statutes were designed solely to protect cyclists from themselves, not to protect other members of the driving public. This being the case, the opponents urged the state or municipality that enacted them had acted beyond the limits of its constitutional powers.

Constitutional challenges to headgear legislation raised the legal, political, and philosophical question of whether, and to what extent, government may act to protect individuals from their own indiscretions. Some courts squarely faced this question and held that government may protect human life for its own sake. Most other courts, however, reached this result less directly by painstakingly describing the social benefits that result from enforced self-protection. Thus the great weight of judicial authority has concluded that motorcycle helmet-use laws, despite their self-protective aspects, were constitutionally permissible: these statutes were within the scope of legislative power; and the opponents' arguments were matters for the legislature--not the courts--to consider.

Even though the constitutional arguments raised by opponents of mandatory headgear legislation carried little weight as constitutional claims, they do have considerable social and political force that has led to the repeal or weakening of headgear legislation by a majority of state legislatures. Arguments that fail to impress a court often will succeed in the legislature; thus, despite the absence of court challenges to helmet laws in recent years, the issues discussed here remain pertinent to the promotion of motorcycle safety. Proponents of mandatory helmet-use legislation, and other safety measures, will continue to face arguments similar to those raised in the cases discussed here.

BACKGROUND

The first mandatory headgear statute was passed by the New York legislature in 1966. The New York statute, forbidding any person from operating or riding on a motorcycle on the public streets or highways without wearing an approved protective device, served as the model for most other states' laws. Massachusetts and Michigan soon followed New York's lead and enacted similar legislation.

That same year Congress passed the Highway Safety Act of 1966, which required states to develop and implement highway programs approved by, and in accordance with standards promulgated by, the Secretary of Transportation. One of those standards, promulgated by the Secretary in June 1967, required states to enact mandatory helmet-use statutes. Failure to comply could subject states to the loss of federal highway safety appropriations. All but three states eventually complied with the federal standard: California never adopted headgear legislation; Illinois' statute was declared unconstitutional

and was repealed shortly thereafter; and Utah's provision applied only to roads with a posted speed limit of more than 56 km/h (35 mph).

Following attempts by DOT to penalize the three noncomplying states, as well as efforts by motorcyclists' organizations to modify the motorcycle standard, Congress added to the Federal Highway Act of 1976 a provision that limited DOT's penalty powers. As of December 1979 eight states have repealed their helmet-use laws entirely, and twenty others have limited their mandatory helmet-use statutes to minors. Most of this legislative activity occurred shortly after the DOT motorcycle standard was limited by Congress. In the past year fifteen states considered bills that would repeal existing headgear legislation or require their use by minors only, and only one was passed; efforts to reinstate or strengthen helmet-use laws were reported in seventeen other states, and only one was successful.

During the time the DOT helmet standard was in effect challenges to the constitutionality of headgear legislation were raised in the appellate courts of thirty-four states. Only the Supreme Court of Illinois struck down the state helmet-use statute; the highest courts in twenty-six other states and intermediate appellate courts in seven others upheld such laws against constitutional challenges. The last reported helmet-law cases were decided in 1977.

LEGAL BASIS FOR HEADGEAR LEGISLATION

Headgear legislation is an exercise of a state's "police power," that is, the power to enact laws to promote the public health, safety, morals, or welfare. While the bounds of the police power are not capable of precise definition, that power may constitutionally be exercised, even to the point of interference with personal rights, provided two requirements are met:

- The public interest, not the interests of a particular person or group, requires interference with individual rights; and
- The means of carrying out the public interest are both reasonably necessary to accomplish it, and are not unduly oppressive upon individuals.

Since the validity of the police power depends on the existence of both a valid purpose and reasonable means for carrying it out, constitutional attacks on its exercise turn on challenges to the existence of either or both of them.

Most court challenges to helmet laws alleged that they lacked a public purpose, since they dealt only with an individual's private welfare and not that of society as a whole. Such legislation, argued the opponents, was an unjustified infringement of personal liberty.

At the outset, two other considerations strengthen the case for the constitutionality of headgear legislation. The first is the general presumption of constitutionality that courts give actions of the legislature. The second is the state's plenary (complete) power over its highways, to regulate for the safety and the best interests of the public.

"Public Charges" and Indirect Public Benefits

The constitutionality of headgear laws depends on the existence of a "public purpose" to support them. The public purpose furthered by this legislation, as defined by the courts, has ranged from the indirect public benefits of protecting an individual motorcyclist from the consequences of his own dangerous conduct to the protection of all highway users who are exposed to the hazards presented by unprotected cyclists.

Few courts chose to regard the protection of a motorcyclist's life and health as an end in itself. Instead, many courts pointed to the indirect public benefits flowing from the lower casualty rates among helmeted cyclists: when a person neglects his own health, safety, or welfare, all of society suffers. Many indirect public benefits of helmet-use laws are financial: lost productivity, higher welfare costs, and increased insurance rates. The most frequently quoted expression of this so-called "public charge" rationale is found in a federal district court decision, *Simon v. Sargent*:

"From the moment of the injury, society picks the person up off the highway; delivers him with unemployment compensation if, after recovery, he cannot replace his lost job, and, if the injury causes permanent disability, may assume the responsibility for his and his family's continued subsistence. We do not understand a state of mind that permits [the motorcyclist] to think that only he himself is concerned."

Variations of the public-charge rationale for self-protective legislation include: the state's interest in maintaining a productive citizenry; the effect of motorcycle accidents on insurance rates, particularly in "no-fault" states; the value of helmet use in mitigating damages in civil suits; the strong public policy against self-destruction, making illegal, for example, suicide pacts and self-maiming; and the characterization of the increased motorcycle casualty rate as a "public disaster" requiring action by society.

A few courts and judges, however, refused to find a public benefit flowing from helmet-use statutes and concluded that those laws were an unjustified invasion of personal freedom. Typical of this "no public purpose" reasoning was made by the Supreme Court of Illinois in *People v. Fries*:

"However, the legislature may not, of course, under the guise of protecting the public interest, interfere with private rights...The manifest function of the headgear requirement in issue is to safeguard the person wearing it--whether it is the operator or a passenger--from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety."

The dissenters in several other decisions also argued that helmet laws were an imposition of government authority into areas of private conduct and not a proper function of government.

Even those courts that adopted one version or another of the public-charge theory frequently made it clear that not all self-protective legislation would be upheld. Some courts accepted the headgear requirement, but carefully limited their rulings to the helmet laws themselves and reserved the option to strike down in the future more restrictive safety measures, for example, mandatory seatbelt-use laws.

Some courts used a balancing test to sustain the challenged headgear legislation, such as the version spelled out by the Supreme Court of Hawaii which, in *State v. Cotton*, articulated its theory of "significant secondary harms":

"Viewed without limit, of course, "secondary harm" arguments could justify an impermissible wide range of governmental interference with private liberties...[H]owever...merely because protecting the public from secondary harms could logically justify a vast range of governmental interferences with individual liberty, and merely because we could define secondary harms as including anything lessening the full development of an individual's perfection, this does not mean that such interference is always improper."

Then, after noting the relationship between headgear legislation and reduction of injuries to cyclists, the Hawaii court observed:

"With the great danger of primary harm helmetless cyclists as well as the rationality of helmet wearing as a safeguard thus statistically supported, the magnitude of secondary harms of the nature indicated above is sufficiently great to justify the law at issue in this case. In answer to the *reductio ad absurdum* argument of the dissent in this case with respect to the extent of governmental intrusions justifiable by secondary harm analysis, we refer to the statement (in an earlier decision that upheld the state helmet law as constitutional) that "this holding is limited to this case."

Similarly, the Michigan court concluded that headgear legislation placed a relatively minor burden upon cyclists while benefitting both cyclists as a class and society as a whole.

Direct Public Benefits

Rather than construct social benefits from enforced self-protection of motorcyclists, many courts have chosen to characterize the public benefit of mandatory helmet-use laws as preventing direct harm to other drivers. A typical judicial statement of this rationale is as follows.

"[N]ot all highways are deserted these days; in fact, few are. If the loss of cyclist control were to occur on a well-traveled highway the separation between consequence and incidence is less sharp. Anything that might cause a driver to lose control may well tragically affect another driver. If the loss of cyclist control occurs on a crowded freeway with its fast-moving traffic, the veering of a cyclist from its path of travel may pile up a half-dozen vehicles."

A variation of this "direct-harm" theory involved protecting other drivers from additional criminal or civil liability should they be at fault and strike a motorcyclist. One court described this as follows:

"For example, the (helmet law) benefits the driver of a vehicle which may accidentally collide with a motorcyclist. Since the helmet is designed to reduce injury to the cyclist, it also has a concomitant effect on the status of the automobile driver. If the helmet succeeds in mitigating what would otherwise be a fatal injury, then not only has the cyclist survived, but the automobile driver has not killed anyone."

Relatively few crashes and casualties result from the series of events described above; however, a direct-harm collision is possible and thus most courts will accept this rationale as sufficient justification

for headgear legislation. In addition, because avoiding direct harm is a more narrow legal principle than that of reducing indirect social harms, many courts have preferred it as the reason for holding helmet-use laws constitutional. Even some courts that appeared to endorse the indirect aspects of self-protection as a valid basis for legislation nonetheless preferred to base their holding on the direct-harm rationale.

Other Attacks on Headgear Legislation

Challenges alleging infringement of personal liberty or arguing that the state went beyond its police powers were almost uniformly rejected by courts. Therefore, opponents of headgear legislation either shifted their attack from the purpose furthered by headgear legislation to the means furthering that purpose, or raised other constitutional objections to helmet-use laws. A variety of challenges were raised to helmet-use statutes; here again, nearly all were turned down by state courts. These challenges have included:

- *Denial of equal protection*, alleging that cyclists have unreasonably been placed in a class separate from other traffic and drivers, and unjustly regulated on the basis of that distinction. Courts rejecting equal-protection challenges have pointed out the physical characteristics of motorcycles, the use to which cycles are typically put, and the increased accident exposure of cycles as justifications for classification and treatment different from automobiles and trucks.
- *Vagueness*, alleging that the standards for helmet use failed to give motorcyclists fair notice as to what type of headgear would comply with the statute. The courts responded by determining the term "helmet" to have a specific meaning when applied to motorcycle headgear, just as it does in the case of fire, police, and football helmets.
- *Abridgement of freedom of speech*, alleging that headgear legislation restricts the cyclist's freedom to express an idea. The courts have pointed out that helmetless operation of a motorcycle has a predominant "non-speech" component--namely, conduct that may be regulated by the police powers of the state.
- *Illegal delegation of powers*, alleging that the legislature, by giving an administrative body power to establish headgear standards, unlawfully permitted it to act as a legislative body. Courts have concluded that headgear legislation is a lawful delegation of power provided it describes the job to be done, who must do it, and the scope of his authority.
- *Infringement of the right to travel*, alleging that headgear legislation is an unwarranted interference with that right. Courts have emphasized that helmet-use statutes merely regulate and do not prohibit travel. The courts have similarly rejected contentions that headgear legislation unfairly burdens interstate commerce, declaring that compliance with such laws is a slight burden.
- *Privacy*, alleging that headgear legislation violates the motorcyclist's constitutional "right to be let alone." Courts that have been faced with privacy claims have been inhospitable toward them. Typical of these was the Wisconsin court in *Bisenius v. Karns*, which stated: "There is no place where any such right to be let alone would be less assertable than on a modern highway with cars, trucks, busses and cycles whizzing by at sixty or seventh miles an hour. When one ventures onto the highway, he must be expected and required to conform to public safety regulations and controls..."

CONCLUSIONS AND IMPLICATIONS FOR RESEARCH

A review of the case law dealing with challenges to headgear legislation leads to the following conclusions about these laws:

- With a single exception, every state court of last resort that considered the issue has upheld headgear legislation as a valid exercise of state power.
- The courts are not in agreement, however, as to what is the public benefit justifying the constitutionality of headgear legislation. Some have pointed to indirect social benefits such as lowered welfare costs, stemming from helmet-use laws; other courts have chosen to stress more direct benefits, principally the avoidance of multivehicle crashes caused by unhelmeted cyclists who lose control of their cycles.

The almost unanimous conclusion of the courts, that states may constitutionally enact headgear legislation, establishes the narrow legal principle that there exists no constitutional prohibition against passing and enforcing helmet-use statutes. The judicial opinions do not necessarily establish whether it is wise or politically advantageous to enact such legislation.

No reported cases involving challenges to headgear legislation have been decided since 1977. After Congress overrode the DOT helmet standard, opponents of headgear legislation took their case to the state legislatures. Within two years of the congressional action, a majority of states repealed or weakened their helmet-use statutes; however, the trend toward repeal has since slowed. Nevertheless, legislative interest in headgear statutes remains high, as efforts to strengthen or weaken them are being considered in more than half the states. Debate at the state level has focused on the cyclist's liberty and privacy on one hand, and the resulting losses on the other. For that reason, the constitutional arguments formerly considered by the courts remain important social and political issues that proponents of helmet-use laws and other safety legislation will continue to face. Future research should continue to focus on legislative action concerning headgear statutes, as well as the reasons why legislators choose to retain, weaken, or strengthen them.