

Adolescent Bedtime Rules: Legal Effects Under Customary Law and Discretion

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Abstract. In daily life, children often get used to staying late or even staying up late because of the rebellion of adolescent psychology against the non-mandatory rules formulated by the family. To explore the legal effect of such rules, this article analyzes the regulation of bedtime according to customary law. The two criteria of discretion and strategic non-enforcement are used to support the reason why customary laws (incorporate the bedtime rule made by the parents) have real legal effects. Through legal case studies and the comparison and contraction of disobeying regulated bedtime, the author admits that such rules sometimes can be criticized, which jeopardizes the characteristics of enforcement and credibility for laws with certain unfairness and lack of enforcement. However, they can be refuted based on the progressive principle, the dynamic balance between rules and discretion, and another theoretical basis. Given the disputes raised in this paper, the author also put forward the corresponding improvement measures after each refutation. To put it in a nutshell, the author thinks that the family rules produced in the absence of hard punishment like the regulated bedtime.

Keywords: customary law, discretion, strategic non-enforcement, incremental adjustment strategy

1. Introduction

According to Hart, law in social functions not merely as a mechanism but also as a means of articulating and reinforcing community values and norms [1]. Similarly, in order to maintain the orderly operation of society in daily life, family rules are like the epitome of written laws. And the rules often play important roles in the invisible mechanism of social governance. Specifically, in the sanctity of home, rules like a prescribed 11 PM bedtime, while seemingly arbitrary, echo profound legal principles shaping societal governance. This essay delves into the nuanced application of such rules within the family structure, likened to customary law, and strategic non-enforcement observed in global labor regulations. First, we will explore how the 11 PM bedtime, much like customary law, evolves and adapts within the family, underpinned by tacit agreements that bind its members through a shared understanding, rather than through strict enforcement. This familial rule serves as a microcosm of societal norms where discretion allows for flexibility in the face of daily challenges and extraordinary circumstances. Finally, we will discuss the implications of strategic non-enforcement, demonstrating that the absence of strict adherence to this bedtime rule does not diminish its validity but rather establishes a benchmark for expected behavior, fostering an environment of compliance balanced with necessary flexibility.

2. Nature and Function of Customary Law

This paper posits that the practice of setting a bedtime, while a family rule, can be analyzed through the lens of customary law, which, much like family rules, is often not codified but rather adhered to due to longstanding community acceptance and practice. Echoing Hans Kelsen's view, customary law can be seen as a form of tacit agreement among community members, akin to an unspoken contract that operates through implied consent rather than explicit directives [2]. In the domestic sphere, this is mirrored by the bedtime rule which, though rarely enforced to the letter, is generally understood and accepted by all family members. This acceptance underpins the sovereignty of family governance, emphasizing voluntary compliance over coercive enforcement, paralleling how states rely on the perceived legitimacy of their laws. Kelsen argued that viewing customary law in this way supports the notion of sovereignty in international law, where states operate under laws agreed upon through implied consent rather than explicit legislative acts [2]. This perspective is crucial as it suggests that sovereignty—the ultimate authority

within a system—is maintained not through overt force but through the mutual acknowledgment and adherence to these tacit agreements.

This concept of implicit agreements is reflected in family life, where an agreed-upon bedtime, though not strictly enforced, helps maintain a structured environment. Authority here is upheld not through coercion but through mutual understanding and respect, demonstrating the inherent flexibility of such rules. Kelsen's theory illuminates how the sovereignty of family governance, like that of states, is based on the perceived legitimacy of its rules and the voluntary compliance of its members. The flexibility of customary law allows it to evolve in response to changing community needs, similar to how family rules adapt to the household's rhythms and needs [3]. For example, the 11 PM bedtime in a family setting serves not just as a strict rule but as a guideline that can be adjusted during special occasions like school proms or during less structured times such as summer vacations. This adaptability ensures that the rule remains relevant and accepted by those it governs, balancing strict adherence with practical, situational considerations.

This approach mirrors legal principles observed in many judicial systems where minor infractions are often overlooked to focus on more significant issues, thereby maintaining a balance between the strict enforcement of laws and pragmatic governance. An illustrative example of this dynamic is the evolution of the Black Administration Act as reviewed by the Constitutional Court. Initially crafted to fit notions of racial separation, this legislation has been transformed to promote values that underlie an open and democratic society based on human dignity, equality, and freedom. The court declared that when interpreting the Bill of Rights, it must consider international and foreign laws, thus broadening its scope to reflect global human rights standards [4]. This reformation highlights how laws, much like family rules, are not static but evolve to align with contemporary values and societal needs.

Despite the lack of punishment for non-compliance, the established bedtime remains effective as it is generally recognized and observed within the family context. Thus, the essence of the rule is maintained not through strict enforcement but through its acceptance as a guiding norm.

3. Discretion in Rule Application

Discretion refers to the ability of legislative or administrative bodies to make substantive and procedural choices within the limits of the powers delegated to them, aiming to fulfill the purpose for which these powers were granted [5]. As a crucial theoretical basis, discretion underscores the legal recognition of flexibility in settings such as the 11 PM bedtime, akin to a customary law. However, critics argue that without clear standards, discretion can open doors to favoritism and discrimination, potentially leading to inconsistent enforcement. For example, parents might apply bedtime rules differently among siblings, leading to perceptions of unfairness and ineffectiveness.

Yet, as legal philosopher Carl E. Schneider notes, the balance between rules and discretion within any system is dynamic and subject to change [6]. If discretion becomes predominant, rules often start to crystallize to guide that discretion. A relevant illustration of this dynamic is the NetzDG law, established in Germany in 2017 to address the inefficacies of social media platforms in handling illegal content [7]. The law mandates social media companies like Facebook, Google, and Twitter to self-regulate content, delegating judicial competence similar to that in the Google Spain case. Here, the Court of Justice of the European Union ruled that Google must decide whether certain search results should be removed based on their relevance or excessiveness over time, effectively balancing discretion with structured guidelines.

Similarly, on a more day-to-day level, uniform application of rules does not necessarily lead to fairness, particularly when individual circumstances vary significantly. For instance, while a park rule generally prohibits vehicles, borderline cases such as bicycles or skates might be allowed based on situational discretion [8], ensuring the rule serves its underlying purpose of enhancing park enjoyment and safety.

The underlying logic of these examples closely mirrors the flexibility required in the application of the 11 PM bedtime in a family setting, where the needs of each child might differ. For children in intense academic periods, strict adherence to the bedtime is crucial for adequate rest and performance. Conversely, for those on break, more flexibility might be appropriate to allow for valuable life experiences. Therefore, the discretionary adjustment of sleeping hours, guided by the overarching purpose of the bedtime rule, does not undermine its status as a form of customary law but rather affirms its adaptability and relevance.

4. Strategic Non-Enforcement and Its Implications

At the same time, the true legal nature of 11 pm as the specified bedtime is still in question because it is not mandatory. Such a lack of enforcement brings a large amount of controversial issues legally. Take an example of less-than-perfect enforcement of regulations in developing countries that are well established. For instance, studies documenting non-compliance with minimum wage standards in Brazil [9], Costa Rica [10], Honduras [11], and Indonesia [12] illustrate widespread issues. This often leads to a common misconception: if a rule is not strictly enforced, or if no tangible consequences follow its breach, it may be deemed ineffective or merely theoretical by the public. Such thinking suggests that without visible enforcement, rules do not truly function to regulate behavior.

However, this perception overlooks the concept of strategic non-enforcement, where rules, while not always enforced, still set behavioral benchmarks and shape expectations. To illustrate, consider the implementation of minimum wage standard for women in India's informal sector. Despite a legal framework mandating minimum wages, a majority of workers, especially women, often receive less than the mandated amounts. For example, a study by Patel (1990) found that sacked mill workers re-employed in the informal sector typically earned below the statutory minimum wage [9].

Facing this type of persistent issue, scholars like Basu, Chau, and Kanbur have argued that setting a high official minimum wage is one of the most effective methods for improving women's well-being and workplace equity [13]. They contend that even in the absence of strict enforcement, the existence of a legally higher wage creates a benchmark that empowers workers to advocate for increased enforcement and, subsequently, higher actual wages. This approach leverages the disparity between official and actual wages as a tool to promote greater compliance and ultimately improve wage conditions.

This case exemplifies that a rule can remain real and meaningful even if not strictly enforced. Moreover, this gradual approach to fulfilling obligations under established rules is often more effective, embodying what is known as the principle of incremental progress. For instance, the global policy trend of gradually increasing the retirement age demonstrates this principle effectively. By implementing the policy incrementally over several years or even decades, the negative impacts of such reforms are distributed more evenly among the affected population. This slower pace allows for ongoing adjustments in response to economic conditions and social sentiments, which can mitigate potential adverse effects and facilitate smoother transitions [14].

Transitioning from public policies to personal rules, a similar approach can be seen in how families manage bedtime routines. Under most circumstances, children tend to adhere to the bedtime set by their parents, suggesting that the rule, though not rigidly enforced, establishes a clear standard and expectation. This method mirrors the incremental adjustment strategy observed in policy reform, where gradual implementation helps individuals adjust to changes. Parents may opt for a flexible enforcement of the 11 PM bedtime, relying on their trust in their child's ability to manage their time effectively.

5. Conclusion

In conclusion, the flexible enforcement of the 11 PM bedtime rule within a family mirrors the principles of customary law more closely than statutory law. Despite the absence of strict penalties for noncompliance, this rule sets clear standards and expectations, fostering a sense of responsibility and mutual understanding. This paper firstly compares the family bedtime of 11 o'clock to customary law, and then proves and refutes such customary law through two aspects of discretion and strategic non-enforcement to justify that the 11 PM bedtime remains a real and effective guideline. This approach, relying on trust and adaptability, ensures the rule's relevance and influence, much like the incremental adjustments in public policy reform. Thus, 11 PM is indeed my bedtime, even without immediate punishment for staying up later.

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