

Vice Crimes and Preventive Justice

Stuart P. Green

© Springer Science+Business Media Dordrecht 2013

Abstract This symposium contribution offers a reconsideration of a range of “vice crime” legislation from late nineteenth and early twentieth century American law, criminalizing matters such as prostitution, the use of opiates, illegal gambling, and polygamy. According to the standard account, the original justification for these offenses was purely moralistic (in the sense that they criminalize conduct solely or primarily because it is intrinsically wrong or sinful and not because of its negative effect on anyone) and paternalistic (in the sense that they limit persons’ liberty or autonomy supposedly for their own good); and it was only later, in the late twentieth century, that those who supported such legislative initiatives sought to justify them in terms of their ability to prevent harms. This piece argues that the rationale for these vice crimes laws was much more complicated than has traditionally been thought, encompassing not just moralistic justifications but also a wide range of harm-based rationales—similar to those that underlie modern, technocratic, “preventive justice” legislation involving matters such as anti-social behavior orders, sex offender registration, stop-and-frisk policing, and the fight against terrorism.

Keywords Vice crimes · Preventive justice · Legal moralism · Harm principle · Drug crimes · Prostitution · Mann Act · Harrison Act

Vice crime statutes, such as those that make it illegal to use certain drugs, engage in certain types of gambling, sell or buy sexual services, engage in adult incest, or be part of a plural marriage, have often been characterized as applying to conduct that is harmless, or is

An earlier version of this paper was presented at a workshop on Preventive Justice, organized by the Robina Institute at the University of Minnesota Law School.

S. P. Green (✉)
Rutgers School of Law-Newark, Newark, NJ, USA
e-mail: sgreen@kinoy.rutgers.edu