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### Policy's Place in Pedestrian Infrastructure (book review)

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## Book Review

# Policy's Place in Pedestrian Infrastructure

Michael L. Smith\*

### ABSTRACT

Angie Schmitt's *Right of Way: Race, Class, and the Silent Epidemic of Pedestrian Deaths in America* delves into the complex, multi-layered phenomenon of how traffic infrastructure and policies systematically disadvantage pedestrians and contribute to thousands of deaths and injuries each year. Despite the breadth of the problem and its often-technical aspects, Schmitt presents the problem in an engaging and approachable manner through a step-by-step analysis combining background, statistics, and anecdotes.

While *Right of Way* tends to focus on infrastructure design, it offers much for legal scholars, lawyers, and policymakers. Schmitt addresses several policy issues at length in the book. But this discussion raises new questions and illuminates potential connections to other areas of the law. In particular, recent criminal law scholarship addresses the interplay between traffic policy and criminal law enforcement, and related scholarship reveals the scope of the misdemeanor and infraction criminal justice systems and their impact on communities. Schmitt's work illustrates the broader phenomena addressed in this research and can fur-

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ther inform work in this area. This review parses out several of these issues and presents the beginnings of a research agenda inspired by Schmitt's discussion.

Finally, this review runs with one of the ideas suggested in the research agenda through a brief discussion of how *Right of Way* exemplifies a phenomenon of laws as half-measures—policy measures that are politically appealing or cost-effective that fail to meaningfully address social problems yet are presented as solutions. These half-measures flourish in the policy space devoted to pedestrian infrastructure, and this review identifies and critiques examples of these policies while identifying more comprehensive solutions.

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#### INTRODUCTION

Angie Schmitt's *Right of Way: Race, Class, and the Silent Epidemic of Pedestrian Deaths in America* begins with an introduction addressing COVID-19, which, at the time, was in its early stages of emergence. Schmitt highlights rhetoric by then-President Trump and others regarding “acceptable” levels of loss of life for the sake of economic growth and stability—rhetoric that cited America's 37,000 annual traffic deaths.<sup>1</sup> This rhetoric used these tens of thousands of deaths to put the pandemic in perspective: arguing that even if thousands were to die of COVID-19, this wouldn't be all that different from the “normal” traffic deaths that we've come to expect.

In her wide-ranging book, Schmitt details the countless infrastructural, legal, historical, and societal failures that have brought about a world in which tens of thousands of traffic deaths—including thousands of pedestrian deaths—are simply a part of life.

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1. ANGIE SCHMITT, *RIGHT OF WAY: RACE, CLASS, AND THE SILENT EPIDEMIC OF PEDESTRIAN DEATHS IN AMERICA* xi (2020); see also Philip Bump, *Your Analogy Comparing Coronavirus to Car Accident Deaths Is Bad*, WASH. POST (Mar. 24, 2020, 9:28 AM), <https://wapo.st/3RyHQDc> [<https://perma.cc/S99D-S24A>] (quoting Donald Trump's statement, “You look at automobile accidents, which are far greater than any numbers we're talking about . . . [t]hat doesn't mean we're going to tell everybody no more driving of cars.”); Chris Megerian, *Trump and Governors in Heated Debate over Saving Lives Versus the Economy*, L.A. TIMES (Mar. 24, 2020, 6:08 PM), <https://lat.ms/3e7cSEu> [<https://perma.cc/33UH-6MYB>] (noting that car accidents caused “about 36,000 deaths in 2018”).

Schmitt surveys issues including historic and modern trends of blaming pedestrians for their deaths and injuries, vehicle design features that exacerbate pedestrian risk, and geographic features that are consistently tied to pedestrian deaths and injuries. Juxtaposing statistics with anecdotes, Schmitt repeatedly drives home the scope of the problem.

The problem of consistent, numerous traffic deaths isn't going away. The National Highway Traffic Safety Administration recently released its early estimate of motor vehicle traffic fatalities for the first quarter of 2022, finding that the estimated 9,560 deaths marked a 7 percent increase in deaths over the first quarter of 2021 and the highest number of fatalities in a first quarter since 2002.<sup>2</sup> There's something wrong with a status quo in which tens of thousands of deaths per year are normalized.

Schmitt takes on this complex problem by addressing its various layers in a systematic, detailed, and approachable manner. Schmitt begins by pointing out that many traffic and pedestrian deaths originate in certain areas that can be identified down to the street.<sup>3</sup> Those who are injured or killed in traffic-related incidents also tend to have similar characteristics—they are often poor, they are often people of color, and they are often elderly or disabled.<sup>4</sup>

As a matter of policy and infrastructure design, the deck is often stacked against pedestrians. Pedestrians are frequently blamed for their own deaths and injuries.<sup>5</sup> As an example, Schmitt describes Arizona—named “the deadliest state for pedestrians” in 2018.<sup>6</sup> In response to this designation, the director of the Arizona Governor's Office of Highway Safety blamed pedestrians, commenting that they should “use xwalks stupid,” and that pedestrians are at fault for the “overwhelming majority” of crashes because “[t]oo many people are jaywalking.”<sup>7</sup> This perspective and the instinct of blaming pedestrians overlook the defective infrastructure that contributes to these deaths. In Phoenix, Arizona, for example, “[o]nly about one-third of pedestrian deaths in Phoenix, including those that took place in crosswalks, were within five hundred feet of a crosswalk.”<sup>8</sup> The infrequency of pedestrian deaths within a short

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2. *Early Estimate of Motor Vehicle Traffic Fatalities for the First Quarter of 2022*, NHTSA 1, <https://bit.ly/3SxEemf> [<https://perma.cc/F273-YCWY>] (Sept. 2022).

3. SCHMITT, *supra* note 1, at 19.

4. *Id.* at 34–36, 40–44.

5. *See id.* at 49.

6. *Id.*

7. *Id.* at 49–50.

8. *Id.* at 49.

distance of crosswalks indicates a shortage of crosswalks, which may contribute to Arizona's high pedestrian death rate.

Rather than take efforts to address these infrastructure issues, states and cities instead criminalize widespread pedestrian behavior like jaywalking. Rather than solve the problem of pedestrian deaths and injuries, this tactic results in unequal enforcement that further burdens poor communities and communities of color.<sup>9</sup> "Because the offense is so petty, giving police broad discretion over their response, jaywalking lends itself to biased enforcement."<sup>10</sup> The measures that are put in place to reduce pedestrians' risk ultimately end up burdening them even further.

Moving beyond policy, Schmitt addresses trends in vehicle size. Sport utility vehicles and pickups ride far higher than other vehicles, limiting visibility and putting children at particular risk.<sup>11</sup> Higher bumpers also focus the center of impact on pedestrians' chests and torsos and create a substantially higher risk of death for all pedestrians, but especially children.<sup>12</sup> Despite these risks, vehicles continue to grow in size.<sup>13</sup>

In addition to vehicle design, Schmitt focuses on street design as a substantial contributor to traffic deaths. The design and frequency of crosswalks and related signage are substantially dictated by the contents of the Manual on Uniform Traffic Control Devices (MUTCD).<sup>14</sup> The MUTCD discourages crosswalks, setting high (and on many occasions, unattainable) requirements for determinations that signal intersections are necessary.<sup>15</sup> For example, the MUTCD instructs that "a crosswalk with a traffic signal is only 'warranted' if ninety-three pedestrians *per hour* are crossing at the location in question" or if five pedestrians have been struck by vehicles at the intersection within a single year.<sup>16</sup> While engineers and municipalities may deviate from the MUTCD's guidelines, a "common perception" that abiding by the MUTCD's standards shields municipalities from liability often stands in the way of change.<sup>17</sup> The MUTCD is revised by the National Committee on Uniform Traffic Control Devices (NCUTCD), a group of engineers that

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9. *See id.* at 64–66.

10. *Id.* at 66.

11. *Id.* at 79–83.

12. *Id.* at 84–85.

13. *See* SCHMITT, *supra* note 1, at 93.

14. *Id.* at 100.

15. *See id.* at 100–01.

16. *Id.* at 101.

17. *Id.* at 102.

skews heavily male, heavily white, and which tends to be insulated from public involvement and the social consequences of its work.<sup>18</sup>

While *Right of Way* focuses a great deal on the problems pedestrians face, it also spends time discussing potential solutions. Schmitt acknowledges “Vision Zero” programs implemented in the United States and elsewhere—programs that promote reforms and policies with the aspiration of a future with no pedestrian deaths.<sup>19</sup> Some reforms under these programs have been successful. New York City, for example, added numerous bike lanes and speed humps. The city found in 2014 that streets that added protected bike lanes had fewer crashes and pedestrian injuries, while traffic rates remained largely the same.<sup>20</sup> Portland, Oregon, however, lowered speed limits and spent millions on additional crosswalks and traffic cameras but had a notably high level of traffic deaths in 2019.<sup>21</sup>

More aggressive reform efforts abroad suggest alternatives that states and municipalities may eventually consider. Oslo, Norway banned vehicles from “approximately one square mile of the city’s core,” and in 2019, “only one person was killed in traffic within city limits in total.”<sup>22</sup> “In 2019, the European Parliament ruled that by 2022, all new cars will come equipped with speed governors that physically limit the cars from exceeding the posted speed limit,” a measure that is “expected to save fifteen thousand lives over fifteen years.”<sup>23</sup> Movements, such as Families for Safe Streets, have formed to champion reforms as well, leading to additional bike lanes and speed reductions in certain cities.<sup>24</sup>

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18. *Id.* at 104–05.

19. *Id.* at 107–13.

20. *Id.* at 110–11. Protected bike lanes are portions of streets that are set aside for exclusive use by cyclists and are set apart from traffic in some way—often by placing the bike lane at a different level or by placing barriers between the bike lane and the rest of the street. See *One-Way Protected Cycle Tracks*, NAT’L ASS’N CITY TRANSP. OFFS., <https://bit.ly/3SN5nli> [<https://perma.cc/K74J-M8FA>] (last visited Dec. 14, 2022).

21. SCHMITT, *supra* note 1, at 113. Things have continued to deteriorate in Portland, with 63 traffic deaths in 2021. Isabella Garcia, *Pumping the Brakes: How Can Portland Slow Its Rising Traffic Fatality Rate?*, PORTLAND MERCURY (Feb. 4, 2022, 10:30 AM), <https://bit.ly/3rq5R4U> [<https://perma.cc/4MHP-XQGD>]. Why traffic deaths in Portland increased remains unclear—Schmitt suggests that old speeding habits remain and notes that traffic reforms don’t always lead to consistent or immediate results, citing recent increases in traffic deaths in Sweden as another example of this phenomenon. SCHMITT, *supra* note 1, at 113.

22. SCHMITT, *supra* note 1, at 151.

23. *Id.* at 137.

24. *Id.* at 158–64 (describing reform efforts in London and New York City).

Throughout *Right of Way*, Schmitt returns to issues of infrastructure and vehicle design. While laws and policies play a significant role in contributing to traffic deaths and injuries, Schmitt's primary focus remains infrastructure and vehicle design as the primary culprit behind this phenomenon. This is no surprise, given Schmitt's technical background and expertise. But this leaves the book open for elaboration along legal lines. Those approaching *Right of Way* with this perspective will find ample inspiration for new projects, detailed evidence to support existing legal reform efforts, and new ways of looking at policy issues. The remainder of this review first demonstrates the many points of intersection between policy and infrastructure design, and potential strategies for policy reform to address the problems that Schmitt identifies. This review then takes a deeper dive into one of the many legal concepts that Schmitt brings to bear in her book—the notion of laws as half-measures, and the danger of settling for partial solutions rather than exercising the political will necessary to achieve meaningful change.

#### I. THE INSEPARABILITY OF POLICY AND DESIGN

Schmitt's experience and expertise in urban planning informs the narrative throughout *Right of Way*. At the outset, she acknowledges the influence of policy, culture, and vehicle design on pedestrian deaths but identifies “culprit number one” as commercial street design.<sup>25</sup> This perspective is apparent throughout the book, as Schmitt addresses how pedestrian deaths “are not random” and are instead a byproduct of street design—with specific streets and traffic corridors consistently producing most traffic fatalities.<sup>26</sup> Schmitt also describes the outsized role of the Manual on Uniform Traffic Control Devices (MUTCD) in informing how streets and highways are constructed, including the MUTCD's bias toward systems that increase vehicle flow at the expense of pedestrian crossing opportunities.<sup>27</sup> Infrastructure design isn't the only issue, as Schmitt notes that the weight and height of sport utility vehicles and trucks puts pedestrians at greater risk than shorter and smaller cars like sedans.<sup>28</sup> Other vehicle design aspects, such as self-driving cars, may have mixed results for pedestrian safety.<sup>29</sup>

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25. *Id.* at 3.

26. *Id.* at 19.

27. *Id.* at 100–02.

28. *Id.* at 82–87.

29. *See id.* at 126–33.

Schmitt is not a lawyer and does not claim to be an expert on policy or traffic law. Still, she provides a substantial amount of information on relevant traffic laws and how they tend to disadvantage communities of color through discriminatory enforcement.<sup>30</sup> In 2016, for example, 50 percent of those cited for jaywalking in San Francisco were Black, even though Black people made up “just 15 percent of the population.”<sup>31</sup> Schmitt notes similar patterns of jaywalking enforcement in Seattle—with 26 percent of jaywalking tickets going to Black people who make up just 7 percent of the population.<sup>32</sup> And in Jacksonville, Florida, a review of jaywalking tickets from 2012 to 2016 revealed that “Black people were three times as likely as white people to be ticketed for a pedestrian infraction,” while Black people “liv[ing] in the poorest zip codes were six times as likely.”<sup>33</sup> While Schmitt is not a legal scholar, the examples she cites confirm concerns long expressed by prominent figures in the criminal legal literature: that where white, Black, and Hispanic people engage in criminal behavior at similar rates, it is the Black and Hispanic people who will face higher levels of prosecution for this behavior.<sup>34</sup>

It is in instances like these, where Schmitt's down-to-earth examples and statistics intersect with core legal concepts, that it becomes apparent how much law can gain from the detailed, technical account of infrastructure history and policy. And while Schmitt labels infrastructure design, rather than traffic policies, as the primary cause of pedestrian deaths, reading her account of the problem from a legal perspective just as easily supports framing these design flaws as policy failures. After all, it is municipalities and their policy preferences (including cost-benefit analyses) that result in these destructive designs. This suggests that policy may play a greater role in contributing to these dangerous infrastructure designs but may also contribute to their potential solutions. *Right of Way* is therefore a crucial resource for those versed in the law—whether they are practicing attorneys or those serving in or appearing before local governments—along with communities more generally who are affected by these policies.

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30. *Id.* at 66–67.

31. *Id.* at 66.

32. SCHMITT, *supra* note 1, at 66.

33. *Id.* at 64; *see also* Topher Sanders, Kate Rabinowitz & Benjamin Conarck, *Walking While Black*, PROPUBLICA (Nov. 16, 2017), <https://bit.ly/3rpP020> [<https://perma.cc/4QVH-4MP9>].

34. *See, e.g.*, WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 4–7 (2011); Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 331, 344–46 (1998).



Reading *Right of Way* from a legal perspective reveals numerous avenues for further research and reform that tend not to rise to the forefront of popular legal discourse. What might one learn about how criminal justice systems treat and classify criminals and victims from how news and discussions over pedestrian injuries tend to suggest or outright blame pedestrians for harm and injuries they've suffered?<sup>35</sup> How much does discriminatory enforcement of jaywalking and other pedestrian violations contribute to unequal treatment of poor people and those from communities of color in the greater scheme of America's criminal justice system?<sup>36</sup> How much do engineers following the MUTCD defer to its vehicle-favoring guidelines in advising and contributing to infrastructure planning, and to what extent do these engineering preferences make their way into statutes and ordinances?<sup>37</sup> What liability issues may arise in the context of self-driving vehicles, and could safeguards built into these vehicles end up having the unanticipated consequence of making drivers even more negligent?<sup>38</sup> Schmitt's wide-ranging survey of traffic and pedestrian law implicates all of these questions and provides fertile ground for law-oriented researchers and reformers seeking support for arguments, targets for change, or legal problems to dissect.

Taking this legal perspective doesn't just reveal areas of further research, critique, and reform. It is also a step toward breaking down perceived barriers between the technological basis for infrastructure design and infrastructure policy. Schmitt's presentation of policy issues and design sets forth fact after fact illustrating the relationship between policy and design. But even she is prone to cabin the two fields—suggesting, for example, that infrastructure design bears more blame than policy for pedestrian deaths and injuries.<sup>39</sup> This also occurs as Schmitt discusses the National Committee on Uniform Traffic Control Devices (NCUTCD)—a group of engi-

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35. SCHMITT, *supra* note 1, at 49–52 (describing official statements regarding pedestrian safety and arguing that these statements put an unwarranted onus on pedestrians to avoid harm despite their vulnerable status).

36. *Id.* at 66–72 (describing patterns of discriminatory enforcement of jaywalking laws); *see also* ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME 152–57 (2018) (describing how racial discrimination in arrests and criminal law enforcement disproportionately affect Black people).

37. SCHMITT, *supra* note 1, at 100–06 (describing the Manual on Uniform Traffic Control Devices and the National Committee on Uniform Traffic Control Devices who revise this publication, and how this group of engineers traditionally favors vehicle-friendly infrastructure at the expense of walkability).

38. *Id.* at 133–36 (discussing vehicle automation and safeguards).

39. *Id.* at 3.

neers with “the power to make changes to the *MUTCD*.”<sup>40</sup> Schmitt argues that the NCUTCD helps perpetuate infrastructure design traditions that tend to prioritize the flow of vehicle traffic over pedestrian convenience and well-being, providing various examples of the group’s bias toward higher speeds and wealthier communities.<sup>41</sup> But while Schmitt highlights criticism of these groups by other engineering organizations and lauds those other organizations’ efforts toward reform, the problems with the NCUTCD and its output tend to remain within the domain of the technical experts.<sup>42</sup>

It shouldn’t stay this way. Those on the policy side of things—particularly state and local policymakers and those who advocate before them—should seize on and implement these critiques as well. To be sure, bridging the gap between technological considerations and policymaking can be a difficult endeavor. But those who are responsible for infrastructure design should face pressure not only from those within their discipline but from the community as well. There’s a need for this; Schmitt highlights criticism of the NCUTCD as failing to consider the “wider social consequences of their work,” as this goes beyond their training.<sup>43</sup> Political actors and advocates should therefore call on engineers to consider designs and strategies that prioritize pedestrian safety. While particular solutions may be up to those with the expertise, there should be no shying away from taking a firm stance that reforms are required and rejecting designs and plans that fail to measure up to what reformers are seeking.

At first glance, *Right of Way* may seem to be a specialized work that is of interest only to those focused on traffic and pedestrian policy and the technological design of infrastructure systems. This impression is mistaken. To start, the book is of urgent relevance to anyone who lives in a city, town, or municipality with traffic. Moreover, the issues Schmitt addresses may lend themselves to partial solutions if one reads her book in a cabined manner—focusing only on the infrastructure design perspective or the policy perspective. A broader reading, which bridges the gaps between technical design and policy, encourages interaction between these fields. Political trends and concerns may inform the technical deliberations of engineers, and a deeper understanding of design may, in turn, focus the demands of policymakers and their constituents.

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40. *Id.* at 102–06.

41. *Id.*

42. *Id.*

43. *Id.* at 105.

In this spirit, legal writing on traffic policy and adjacent issues may become more implementable and approachable by accounting for technical considerations and infrastructure trends. At the very least, those writing and practicing in the legal arena may take from Schmitt's writing a sense of urgency and purpose in seeking to reform policies that cause thousands of deaths each year.

Scholarship building on the design and policy critiques that permeate *Right of Way* may go in a number of directions. Schmitt's writing helped inform my own writing focused on the notion of "distracted walking" and various cities' efforts to ban or curtail the practice.<sup>44</sup> The next section of this review uses Schmitt's writing as a springboard for addressing the larger phenomenon of laws as half-measures that take the place of more thorough reforms and solutions. There's no shortage of additional ideas that *Right of Way* may inspire, and the list below outlines a potential research agenda inspired entirely by the issues Schmitt addresses:

- The broader impacts of enforcing laws like jaywalking against pedestrians—including how many pedestrian stops and arrests in the course of discriminatory enforcement result in criminal cases, and what proportion of overall arrests and prosecutions is made up of cases arising from pedestrian stops and tickets.<sup>45</sup>
- Whether discriminatory enforcement patterns against pedestrians in particular areas are mirrored in how traffic laws in those areas are enforced, and to what extent poor pedestrian infrastructure pressures people in these areas to drive, rather than walk.<sup>46</sup>
- The frequency of references to pedestrian safety in legislative debates and veto messages over criminal laws targeting pedestrian behavior, and how this supplements the examples Schmitt raises of media and official tendencies toward blaming pedestrians for their own deaths and injuries.<sup>47</sup>

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44. See generally Michael L. Smith, *Distracted Walking*, 126 PENN ST. L. REV. 707 (2022). See also SCHMITT, *supra* note 1, at 12–14.

45. See SCHMITT, *supra* note 1, at 64–68 (describing discriminatory enforcement of laws against pedestrians). See generally NATAPOFF, *supra* note 36 (describing the vast scope and millions of cases included in America's misdemeanor criminal justice system).

46. See SCHMITT, *supra* note 1, at 64–68. See generally SARAH A. SEO, *POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM* (2019) (describing the historic trend toward vehicle use in America, and how law enforcement tactics adapted to this trend).

47. See SCHMITT, *supra* note 1, at 49–51; see also Letter to the Members of the California State Assembly, Gavin Newsom, Governor of California, Newsom Statement on A.B. 1238 (Oct. 8, 2021), <https://bit.ly/3M21h69> [<https://perma.cc/>

- How civil lawsuits fit into the policy and infrastructure landscape that Schmitt describes, including whether lawsuits play a meaningful role in prompting infrastructure changes or policy reform, and whether state-level rules that limit recovery, shield municipalities, or otherwise make litigation more burdensome are correlated with stagnation in infrastructure design.
- Whether there are more or fewer pedestrian deaths and injuries in municipalities or areas with higher levels of jaywalking enforcement, and what lessons may be learned about deterrence and the basis for criminal penalties in light of this.<sup>48</sup>

These are the initial impressions of someone with interests in criminal law and procedure and municipal laws. Those interested in administrative law, comparative law, and law and technology will likely find even more points of interest.

## II. LAWS AS HALF-MEASURES

Reading *Right of Way* with a legal eye reveals not only where traffic and infrastructure policies are lacking but various ways in which certain policies are substituted for reforms that may be expensive or politically unpopular. Municipalities, faced with the prospect of expensive changes to pedestrian infrastructure, may choose criminalization as an alternative. After all, criminalizing behavior costs nothing (at least for the municipality) and makes it seem as though something is being done.

Take jaywalking, for example. Schmitt discusses the historical development of the crime, noting that in the early 1900s, drivers tended to be blamed for the numerous pedestrian deaths (especially children's deaths) resulting from the relatively new technology of automobiles.<sup>49</sup> Peter Norton elaborates, noting that automobiles' speed was frequently cited in blaming motorists for pedestrian deaths and injuries.<sup>50</sup> As time went on, a campaign to blame pedestrians, rather than drivers, by labeling pedestrians as "jays" (a derog-

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G33U-9E9G] (vetoing a bill that would have decriminalized jaywalking and claiming that pedestrians are at fault for collisions that threaten their safety).

48. On a related note, the issue of whether criminal penalties against jaywalkers are at all warranted from a deterrence perspective—as the risk of death or serious injury from jaywalking would presumably constitute sufficient deterrence—may be worth exploring as well.

49. SCHMITT, *supra* note 1, at 69.

50. PETER D. NORTON, FIGHTING TRAFFIC: THE DAWN OF THE MOTOR AGE IN THE AMERICAN CITY 30–31 (2011).

atory term for an ignorant person) took hold and ultimately succeeded, leaving drivers in control of the streets.<sup>51</sup>

Today's jaywalking restrictions reflect the result of these trends: pedestrians remain restricted from the streets but for crosswalks under threat of fines and other penalties.<sup>52</sup> Efforts to reform these restrictions run aground against mixed messages that simultaneously blame pedestrians for their own harms and purport to protect pedestrians through the continued criminalization of their behavior.<sup>53</sup> For example, after California's legislature recently passed a bill legalizing most instances of jaywalking, California's governor vetoed the bill, claiming that the law would "unintentionally reduce pedestrian safety and potentially increase fatalities or serious injuries caused by pedestrians that enter our roadways at inappropriate locations."<sup>54</sup>

Stepping back, it's worth considering what factors contribute to jaywalking in the first place. Schmitt points out that crosswalk spacing plays a significant role, noting that areas that are more dangerous to pedestrians tend to have infrequent crosswalks that are sometimes "over a mile and a half apart."<sup>55</sup> A historic perspective reveals streets as spaces shared by both pedestrians and vehicles before the rise of the automobile.<sup>56</sup> And while initial backlash to deaths and injuries caused by vehicles took the form of calls to limit traffic, trade groups and politicians ultimately won out, with calls for "safety" taking the form of critiques against pedestrians rather than motorists.<sup>57</sup> This long view reveals a choice: states and municipalities could take a restrictive approach to vehicle traffic and continue the pre-existing trends of shared street use, or they could instead use the force of criminal law to bar pedestrians from roadways. Governments choose the latter approach.

Despite historic trends of designing and legislating in a manner that favors motorists over pedestrians, this choice still remains for legislatures. In the face of continuing, high rates of pedestrian deaths, should policy seek to address the underlying causes of the

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51. SCHMITT, *supra* note 1, at 70.

52. *See, e.g.*, CAL. VEH. CODE § 21955 (Deering 2022) (prohibiting pedestrians from crossing roadways outside of crosswalks).

53. *See, e.g.*, Newsom, *supra* note 47.

54. *Id.*

55. SCHMITT, *supra* note 1, at 71 (quoting Telephone Interview with Sally Flocks, Pedestrian Advocate, Pedestrians Educating Drivers on Safety (July 2, 2019)).

56. BENJAMIN ROSS, DEAD END: SUBURBAN SPRAWL AND THE REBIRTH OF AMERICAN URBANISM 31 (2014).

57. *Id.*

problem and restructure vehicle-centric infrastructure? Or should law instead continue to be used to criminalize pedestrian behavior in an effort to keep them out of cars' ways? With some hopeful exceptions,<sup>58</sup> the trend appears to be toward the latter.

This result may seem unsurprising from a fiscal perspective. The prospect of reforming infrastructure and its associated costs may seem daunting to municipalities—particularly those with limited budgets that face inflexible legal regimes to increase revenues.<sup>59</sup> The alternative approach of criminalizing behavior costs nothing to the municipality and may even lead to increased revenues if enforcement is strict.<sup>60</sup>

But it doesn't have to be this way. To start, infrastructure reforms need not be expensive or dramatic to make a difference. Schmitt notes that certain reforms aren't prohibitively expensive, pointing out that pedestrian signals cost approximately \$5,000 each, which is “a rounding error compared to the cost of road projects.”<sup>61</sup> Leading pedestrian intervals are another option that municipalities may consider as alternatives to further criminalization.<sup>62</sup> These are traffic signals that give pedestrians a head-start for crossing the street before traffic lights signal for vehicles to go.<sup>63</sup> In doing so, pedestrians move farther into the street and are therefore more visible to turning vehicles.<sup>64</sup> These measures are also relatively inexpensive, costing approximately \$1,200 each.<sup>65</sup>

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58. SCHMITT, *supra* note 1, at 159–60 (describing the construction of pedestrian plazas in New York and the subsequent decline in pedestrian deaths and injuries).

59. See Lindsay M. Braun, Jesus M. Barajas, Bumsoo Lee, Rebecca Martin, Rafsun Mashraky, Shubhangi Rathor & Manika Shrivastava, *Construction of Pedestrian Infrastructure Along Transit Corridors*, ILL. CTR. FOR TRANSP. 6 (Mar. 2021), <https://bit.ly/3M1D542> [<https://perma.cc/W792-YUUN>] (noting that “[m]ost municipalities viewed funding as a major implementation barrier” for increased pedestrian infrastructure); see also Michael A. Pagano & Christopher W. Hoene, *City Budgets in an Era of Increased Uncertainty: Understanding the Fiscal Policy Space of Cities*, METRO. POL'Y PROGRAM BROOKINGS 10–22 (July 2018), <https://brook.gs/3Su8crb> [<https://perma.cc/DYR7-PHRG>] (describing legal constraints on municipalities' ability to tax and potential sources for revenue and comparing various cities in this respect).

60. See NATAPOFF, *supra* note 36, at 132–37 (describing varying degrees of state and local dependence on revenue from fines).

61. SCHMITT, *supra* note 1, at 103.

62. *Id.* at 111.

63. *Id.*

64. *Id.*

65. *Id.*

Reforms such as speed limit reductions also serve to decrease pedestrians' risk of death or serious injuries.<sup>66</sup> Several municipalities have taken measures to reduce speed limits, including Denver (residential speeds reduced to 20 mph from 25 mph),<sup>67</sup> Salt Lake City (speed limits on "most streets" reduced from 25 mph to 20 mph),<sup>68</sup> and Minneapolis (various, lower speed limits on different types of streets, including 20 mph in residential zones).<sup>69</sup> While these measures involve some costs, such as sign replacements, they do not require the time and expense that may accompany physical alterations of roads and sidewalks.

But even speed limits can be characterized as criminal measures that take the place of even more effective reforms. Alternatives to ticketing speeders, such as restricting vehicles from certain streets or areas of towns, may virtually eliminate the risk of harm to pedestrians.<sup>70</sup> Mandating speed governors in vehicles may achieve the goals of speed limits without the need for criminal sanctions—as this technology can "automatically cap speeds on or around the legal limit."<sup>71</sup> While little progress has been made on this front in the United States, Europe is planning to require this technology and forecasts that this decision will save thousands of lives.<sup>72</sup> These various reforms may meet and exceed the goals of lowering speed limits.

These reforms discussed in this section may not have the political support necessary to catch on in the United States, at least not on a wide scale. But looking at traffic laws in this alternate light is instructive both for those like Schmitt, who focus on specific reforms in this area of law, and those who seek reform in criminal law more broadly.

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66. *See id.* at 109–10, 161 (describing speed limit reduction policies in various countries and the lower risk of death or serious injury in cities with lower speed limits).

67. Katie Eastman, *Denver City Council Votes to Lower Residential Speed Limits from 25 to 20*, 9NEWS (Dec. 20, 2021, 10:36 PM), <https://bit.ly/3M1DyTQ> [<https://perma.cc/FTZ8-2LFV>].

68. Karah Brackin, *Salt Lake City Council Lowers Speed Limit on Most Streets to 20 MPH*, KSLTV5 (May 11, 2022, 1:38 PM), <https://bit.ly/3yaeAvD> [<https://perma.cc/SBF7-4JAH>].

69. *Speed Limits*, MINNEAPOLIS (Jan. 21, 2022), <https://bit.ly/3SO3IeP> [<https://perma.cc/DL5F-AT2L>].

70. *See* SCHMITT, *supra* note 1, at 151–53 (discussing Oslo's measure of forbidding or severely restricting vehicles from the city center).

71. *Id.* at 137.

72. *Id.*

## CONCLUSION

*Right of Way* sheds light on problems that virtually every town, city, state, and county face. Through clear writing, memorable anecdotes, and reliance on extensive factual evidence, Schmitt makes the case for urgent, dramatic reform to pedestrian infrastructure, vehicle design, and traffic laws. Lawyers and legal scholars should take heed of Schmitt's work and use it as an entry point to further examine issues of local law, infrastructure policy, and infraction-level crime that are often given short shrift in mainstream legal scholarship. By bridging the gap between technical considerations and issues of policy, reform may proceed on a broader range of fronts, and solutions to the ongoing problems pedestrians face may yet materialize.