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Americans Shouldn't Have to Drive, but the Law Insists on It

The automobile took over because the legal system helped squeeze out the alternatives.

[Gregory H. Shill](#) Jul 9, 2019

In a country where the laws compel the use of cars, Americans are condemned to lose friends and relatives to traffic violence. My childhood neighbor was a varsity student-athlete, the president of the junior class, and the most popular girl in school. One day in September 1995, a car crash took her life. She had been driving home on the freeway when her car went across the median and collided with one going the opposite direction, killing both drivers. A third vehicle was said to have struck her car moments before, causing her to lose control. The police put out a call for information, apparently without success.

My neighbor's passing was shocking and heartbreaking. But at the time, it felt like a basically unavoidable tragedy. In our small city in Michigan—like almost everywhere in America—driving is the price of first-class citizenship. We never stopped to ask whether a different bargain was possible. Since her passing, approximately 1 million more Americans have been killed in car crashes.

In America, the freedom of movement comes with an asterisk: the obligation to drive. This truism has been echoed by the U.S. Supreme Court, which has [pronounced](#) car ownership a “virtual necessity.” The Court's pronouncement is telling. Yes, in a sense, America is car-dependent by choice—but it is also car-dependent by law.

As [I detail in a forthcoming journal article](#), over the course of several generations lawmakers rewrote the rules of American life to conform to the interests of Big Oil, the auto barons, and the car-loving 1 percenters of the Roaring Twenties. They gave legal force to a mind-set—let's call it automobile supremacy—that [kills 40,000 Americans a year](#) and seriously injures [more than 4 million](#) more. Include all those harmed by emissions and climate change, and the damage is even greater. As a teenager growing up in the shadow of Detroit, I had no reason to feel this was unjust, much less encouraged by law. It is both.

It's no secret that American public policy throughout the 20th century endorsed the car—for instance, by building a massive network of urban and interstate highways at public expense. Less well understood is how the legal framework governing American life enforces dependency on the automobile. To begin with, mundane road regulations embed automobile supremacy into federal, state, and local law. But inequities in [traffic regulation](#) are only the beginning. Land-use law, criminal law, torts, insurance, vehicle safety regulations, even the tax code—all these sources of law provide rewards to cooperate with what has become the dominant transport mode, and punishment for those who defy it.

Let's begin at the state and local levels. A key player in the story of automobile supremacy is single-family-only zoning, a shadow segregation regime that is now justifiably [on the defensive](#) for outlawing duplexes and apartments in huge swaths of the country. Through these and other land-use restrictions—laws that separate residential and commercial areas or require needlessly large yards—zoning rules scatter Americans across distances and highway-like roads that are impractical or dangerous to traverse on foot. The resulting densities are also too low to sustain high-frequency public transit.

Further entrenching automobile supremacy are laws that require landowners who build housing and office space to build housing for cars as well. In large part because of parking quotas, parking lots now cover more than a third of the land area of some U.S. cities; Houston is estimated to have 30 parking spaces for every resident. As the UCLA urban-planning professor Donald Shoup has [written](#), this mismatch flows from legal mandates rather than market demand. Every employee who brings a car to the office essentially doubles the amount of space he takes up at work, and in urban areas his employer may be required by law to build him a \$50,000 garage parking space.

For those who didn't get the message from the sprawling landscape that zoning has created, the tax code sharpened it by lavishing rewards on those who drive and punishing those who don't. On its own terms, the

mortgage-interest tax deduction is neutral as to the type of home financed, but—given the twin constraints of zoning and mortgage lending—the deduction primarily subsidizes large houses in car-centric areas. Those who walk or bike to work receive no commuter tax benefit, while those who drive [receive tax-deductible parking](#). Another provision of the tax code gives car buyers a tax rebate of [up to \\$7,500](#) when their new vehicles are electric or hybrid; buyers of brand-new Audis, BMWs, and Jaguars can claim the full \$7,500 from the American taxpayer. Environmentally, these vehicles offer an improvement over gas-powered cars (but not public or active transit). Even so, 85 to 90 percent of toxic vehicle emissions in traffic come from tire wear and other [non-tailpipe sources](#), which electric and hybrid cars still produce. They also still contribute to traffic, and can still kill or maim the people they hit. Why are we taxing bus riders to pay rich people to buy McMansions and luxury electric SUVs?

Drivers are subject to traffic regulations and vehicles to crashworthiness tests. But even in these areas, governments have prioritized motorists' convenience over other goals, including the lives of people who aren't driving.

The National Transportation Safety Board has [determined](#) that speed is a top risk factor in motor-vehicle crashes. Yet the [most prominent](#) way of setting and adjusting speed limits, known as the operating-speed method, actually encourages faster driving. It calls for setting speed limits that 85 percent of drivers will obey. This method makes little provision for whether there's a park or senior center on a street, or for people walking or biking.

As a matter of law, the operating-speed method is exceptional. It enables those who violate the law—speeding motorists—to rewrite it: Speed limits ratchet higher until no more than 15 percent of motorists violate them. The perverse incentives are obvious. Imagine a rule saying that, once 15 percent of Americans acquired an illegal type of machine gun, that weapon would automatically become legal. Other legislation amplifies the harm from this method. In California, for example, cities are sometimes [obligated by law to raise speed limits against their will](#), and local governments [are barred](#) from lowering them even for safety reasons. This occurs against a backdrop of radical under-enforcement of the speed limit nationally, and the widespread banning of [proven](#) but unpopular lifesaving technologies such as automated speed cameras.

Just as telling as what activities the law regulates is whose interests it seeks to protect. Dozens of our peer nations require carmakers to mitigate harm to pedestrians caused by their products. U.S. design regulations, however, require only measures that enhance the safety of car occupants. Just as SUVs are becoming taller, heavier, and more prevalent—and pedestrian fatalities [are surging](#)—U.S. regulators have not required carmakers to embrace those more comprehensive [design standards](#). Instead, they've launched campaigns baselessly [blaming](#) pedestrians for their own deaths.

States don't require drivers to carry enough insurance to fully compensate people they hit. The most common amount of required bodily-injury coverage is just \$25,000; in some states, it's zero. A number of states also employ no-fault systems associated with increased fatality risks. This all lowers the up-front cost of driving, but those who lack the protection of a vehicle suffer disproportionately.

Tort law is supposed to allow victims to recover for harms caused by others. Yet the standard of liability that applies to car crashes—ordinary negligence—establishes low expectations of how safe a driver must be. Courts have held that a higher standard—strict liability, which forces more careful risk taking—does not apply to driving. Strict liability is reserved for activities that are both “ultrahazardous” and “uncommon”; driving, while ultrahazardous, is among the most common activities in American life. In other words, the very fact that car crashes cause so much social damage makes it hard for those who are injured or killed by reckless drivers to receive justice.

In a similar spirit, criminal law has carved out a lesser category uniquely for vehicular manslaughter. Deep down, all of us who drive are afraid of accidentally killing someone and going to jail; this lesser charge was originally envisioned to persuade juries to convict reckless drivers. Yet this accommodation reflects a pattern. Even when a motorist kills someone and is found to have been violating the law while doing so (for example, by running a red light), criminal charges [are rarely brought](#) and judges [go light](#). So often do police officers in New York fail to enforce road-safety rules—and [illegally](#) park their own vehicles on sidewalks and bike facilities—that [specific Twitter accounts](#) are dedicated to each type of misbehavior. Given New York's lax [enforcement](#) record, the *Freakonomics* podcast [described](#) running over pedestrians there as “the perfect crime.”

Since the dawn of the automobile, governments have been slow to address its downsides. “We have gloated too much over the usefulness of the motor car,” said *The New York World* in a 1913 editorial. “We put it into reckless hands. We make no effective laws against its misuse.”

In the years since, American government at all levels crossed a line. Instead of merely accommodating some people's desire to drive, our laws essentially force driving on all of us—by subsidizing it, by punishing people who don't do it, by building a physical landscape that requires it, and by insulating reckless drivers from the consequences of their actions. To page through the law books today is to stumble again and again upon evidence of automobile supremacy. The range and depth of legal supports for driving is bewildering. But these laws, which are everywhere we look, are also opportunities.

All of these laws can be reversed directly by the legislative bodies responsible for passing them in the first place. However, a [growing body](#) of academic research suggests that, even when most people favor less restrictive zoning, local officials will side with wealthy homeowners who favor the status quo. In these cases, state legislators can be called upon to help. Reformers have succeeded in doing so in [Oregon](#) and have shown promise in [California](#). Far less attention has been paid, however, at the federal level. Recently, several Democratic candidates for president have [released](#) federal plans to prod states and cities to relax their zoning.

Congress could condition a small share (say, 5 percent) of federal funds on the adoption by states of housing-production goals or Vision Zero [design standardscalibrated](#) for safety. Conditional appropriations, which are [how Congress goaded](#) states into raising the drinking age, are already in use for numerous transportation programs.

Litigation for dangerous street design is [another promising way](#) to hold public entities accountable. So far, plaintiffs have mostly sought money damages, but they can also seek design changes through injunctive relief, including by class action. This has the potential to move not only laws and budgets but the entire discourse around street safety.

Finally, reformers could seek recognition of the freedom to walk. The federal Americans With Disabilities Act and state and local counterparts, as well as case law recognizing a constitutional right to movement, suggest such a right to mobility.

Americans customarily describe motor-vehicle crashes as accidents. But the harms that come to so many of our loved ones are the predictable output of a broken system of laws. No struggle for justice in America has been successful without changing the law. The struggle against automobile supremacy is no different.

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[Gregory H. Shill](#) is an associate professor at the University of Iowa College of Law.