

The Future of Law and Transportation

Gregory H. Shill*

ABSTRACT: Law has played a substantial yet largely uncredited role in shaping, and suppressing, transportation policy debates. Transportation involves tradeoffs and competition for resources—for example, the determination of whose homes are connected by highways and whose destroyed. But it also involves clashes between a particular vision of comfort and convenience—the unimpeded, fast movement of automobiles—and a host of fundamental policy goals, including public safety, racial justice, and climate action. Because legal rules often predetermine the outcome of these conflicts, law has the effect of codifying dubious decisions that were made during the early days of mass automobility and placing the results beyond ready contestation.

This first-of-its-kind Symposium endeavors to open a legal literature on the past, present, and potential of transportation policy. The scholars who participated eschewed the fashionable transportation technology topics of the day and instead confronted essential and long-deferred legal policy questions. They considered these questions through the lens of multiple substantive areas of law, including land use, tax, traffic, vehicle design, consumer and public finance, and state and local government—all with keen sensitivity to economics, politics, race, and culture as reflected in the law. And in doing so, these legal scholars were joined by colleagues from disciplines where transportation scholarship is more established.

This Issue features an astonishing array of scholarship on the future of law and transportation from some of today's most promising and distinguished scholars of the nascent subject. No scholarly field can trace its founding to a single publication, but it is hoped that this Issue will endure as a formative volume in the field of transportation law.

“We have gloated too much over the usefulness of the motor car to consider it in its other aspects as a dangerous menace to safety. We put it into reckless

* Associate Professor of Law, University of Iowa College of Law; Affiliated Faculty Member, University of Iowa College of Engineering National Advanced Driving Simulator; J.D., Harvard Law School; B.A., Columbia University. I wish to express my gratitude here to the *Iowa Law Review* both for its willingness to host a Symposium on a subject that has not received much attention in legal scholarship and for the extraordinary efforts of its editors in the very challenging circumstances of an ongoing pandemic.

*hands. We make no effective laws against its misuse.*¹ –*New York World Editorial, 1913*

*“Here are a couple things America got right: cars and freedom.”*² –*Dodge Challenger advertisement, 2010*

*“In the 50s, the mentality around roads was that they existed for one purpose and that was to move as many cars as you could as fast as you could. And design reflected that. . . . It turns out that we’re better off if our decisions revolve not around the car but around the human being.”*³ –*U.S. Secretary of Transportation Pete Buttigieg, 2021*

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I. AN INTRODUCTION TO THE SYMPOSIUM ISSUE

Like electricity, indoor plumbing, and the internet, transportation is important primarily because of the world it makes possible. A nation’s economic and social potential are in significant measure determined by the quality of its transportation network, which in turn influences not only aggregate economic growth but the geography of development. In 1816, shipping goods 30 miles overland from Eastern ports cost as much as shipping

1. Editorial, *The Cost of Automobile Worship*, EVENING WORLD, Aug. 1, 1913, <https://chroniclingamerica.loc.gov/lccn/sn83030193/1913-08-01/ed-1/seq-10/> [<https://perma.cc/3ASF-C9DZ>]

2. See Andrew Clark, *Does the Dodge Challenger Ad Appeal to Anti-British Sentiment?*, GUARDIAN (Aug. 16, 2010, 10:38 AM), <https://www.theguardian.com/business/andrew-clark-on-america/2010/aug/16/dodge-challenger-advertising-anti-british-sentiment> [<https://perma.cc/2Q5P-qJVA>]. The quoted words, from the ad’s narrator, are the only intelligible language in the 30-second spot; see also Amy Gardner, *Tea Party Movement’s Energy, Anger Make It Target for Admakers*, WASH. POST (July 6, 2010), <https://www.washingtonpost.com/wp-dyn/content/article/2010/07/05/AR2010070502843.html> [<https://perma.cc/2W9A-TXRK>] (analyzing possible political interpretations of the ad’s rhetorical posture).

3. U.S. Department of Transportation, *Infrastructure Designed Around People* | SXS2021, YOUTUBE (Mar. 19, 2021), https://www.youtube.com/watch?v=k7_RA2uQELA [<https://perma.cc/9KPV-XQDE>]; Carlton Reid, *Design for Human Beings Not Cars, New U.S. Transport Secretary Says*, FORBES (Mar. 22, 2021 7:54 AM), <https://www.forbes.com/sites/carlton-reid/2021/03/22/design-for-human-beings-not-cars-new-us-transport-secretary-says> [<https://perma.cc/9U7N-JF7F>].

them across the Atlantic Ocean from Europe.⁴ America's early cities thus "perched on the Eastern seaboard, clustered around ports from Boston to Savannah."⁵ Steamships and canals—and then railroads, highways, and airports—connected a continental nation, forever yoking American progress to transportation. But America's transportation story is not merely an anodyne tale of technological wonder and economic advancement. It is also a distributional story—one of policy decisions increasing power and comfort for some and dirty air and dangerous conditions for others; protecting desirable neighborhoods from marginalized races and classes of people and accelerating climate change in the process; and above all, creating an expectation that ordinary people become owners, operators, and insurers of costly heavy machinery in order to enjoy full citizenship, with all the upstream and downstream consequences that generates for individuals and society. Embedded in these policy choices are many conflicting claims to priority. Yet transportation is frequently represented as a technical field (and as a legal subject, a backwater) that is beyond politics or social policy.⁶

The social and legal history of American transportation is one of contestation foreclosed. Little embodies power more than a rule dictating who must yield to whom—a power structure fortified by differences in the propensity to use different transportation modes by location, class, race, gender, age, and disability.⁷ But pitched debates on the topic began to be

4. GEORGE ROGERS TAYLOR, *THE TRANSPORTATION REVOLUTION 1815-1860*, at 132-33 (Harper & Row 1968) (1951).

5. EDWARD GLAESER, *TRIUMPH OF THE CITY* 44 (2011).

6. For example, highways are often cited, almost fetishized, as the canonical bipartisan federal policy program. *See, e.g.*, Press Release, U.S. Senate Comm. on Env't & Pub. Works, *Highway Legislation Should be Bipartisan, like America's Transportation Infrastructure Act* (June 16, 2020), <https://www.epw.senate.gov/public/index.cfm/2020/6/highway-legislation-should-be-bipartisan-like-america-s-transportation-infrastructure-act> [<https://perma.cc/P35G-5XX5>] (released by the then-GOP led committee quoting six industry officials extolling bipartisanship in federal transportation policy, including the CEO of a roadbuilding trade association quoting former U.S. Transportation Secretary Norm Mineta saying "there are no Democratic or Republican highways"); Ian Duncan, *Biden Meets with Key Senators to Start Bipartisan Talks on Infrastructure Spending*, WASH. POST (Feb. 11, 2021, 2:05 PM), <https://www.washingtonpost.com/transportation/2021/02/11/biden-senators-infrastructure> [<https://perma.cc/5FRY-LSYU>] (quoting President Joe Biden as saying "I really, honest to God, never have thought of infrastructure as being a partisan issue").

7. *See, e.g.*, *Vehicle Choice, Crash Differences Help Explain Greater Injury Risks for Women*, IIHS (Feb. 11, 2021), <https://www.iihs.org/news/detail/vehicle-choice-crash-differences-help-explain-greater-injury-risks-for-women> [<https://perma.cc/87KT-AJ5L>] (concluding that women's higher propensity to be seriously injured in car crashes is partly attributable to the fact that "women more often drive smaller, lighter cars" and are more likely to be struck in certain types of collisions than men); AM. PUB. TRANSIT ASS'N, *WHO RIDES PUBLIC TRANSPORTATION* 4 (2017), <https://www.apta.com/wp-content/uploads/Resources/reportsandpublications/Documents/APTA-Who-Rides-Public-Transportation-2017.pdf> [<https://perma.cc/6XE7-PAXT>] (showing that people of color and the poor are disproportionately represented among transit riders); *see also* Iowa Law, *The Future of Law and Transportation Symposium 2020 | Rights of Way and Public Space Panel*, YOUTUBE, at 01:09-15:01 (Nov. 11, 2020), <https://www.youtube.com/watch?v=tO>

mooted a century ago, in the 1920s, by the twin growth of anti-pedestrian legislation and middle-class motoring, which was becoming an attainable aspiration. Together, these developments cleared the streets for cars by ridding them of people, especially poor children, people of color, and immigrants, who relied disproportionately on pedestrian use of streets.⁸

To paraphrase William Faulkner, when it comes to these choices, the past isn't dead; it isn't even past.⁹ In this young century, over one million Americans have already been killed by car emissions.¹⁰ Within a few years, vehicle collisions will likely have added another million Americans to the century's driving-related body count.¹¹ During the pandemic, politicians made headlines by comparing COVID-19 deaths to car crashes; for example, Wisconsin Senator Ron Johnson proclaimed, "we don't shut down our economy because tens of thousands of people die on the highways. It's a risk we accept so we can move about."¹² Whatever else may be said, the comparison betrays an underlying acceptance of traffic fatalities. Left unanswered is whether a different bargain might be possible.

This question began to be asked in earnest in the late 1960s. At that stage, wrote Marlon Boarnet and Randall Crane in a 2001 book on transportation planning,

Planned highway networks neared completion in many cities. At the same time, the broader social costs of transportation became more apparent[,] . . . [including] [a]utomobile emissions [and the deterioration of] [n]eighborhoods severed by highway projects Scholars and policy analysts now ask whether transportation resources are fairly distributed across different segments of society and how transportation access is linked to labor market success. As all of these issues have moved to the fore, transportation planning

Tl5Nk2D8o&t=3s [https://perma.cc/Uyc4-SEQG] (discussing mobility justice and competing claims to the street).

8. See PETER D. NORTON, *FIGHTING TRAFFIC: THE DAWN OF THE MOTOR AGE IN THE AMERICAN CITY* 11 (Wiebe E. Bijker, W. Bernard Carlson & Trevor Pinch eds., 2008); Gregory H. Shill, *Should Law Subsidize Driving?*, 95 N.Y.U. L. REV. 498, 525 (2020).

9. WILLIAM FAULKNER, *REQUIEM FOR A NUN* 92 (1951).

10. Fabio Caiazzo, Akshay Ashok, Ian A. Waitz, Steve H.L. Yim & Steven R.H. Barrett, *Air Pollution and Early Deaths in the United States. Part I: Quantifying the Impact of Major Sectors in 2005*, 79 *ATMOSPHERIC ENV'T* 198, 207 (2013) (attributing an estimated 58,300 premature U.S. deaths per year to car pollution). Notably, non-exhaust emissions, such as from tire wear and disc brakes, account for over 85 percent of deadly particulate matter emissions (PM_{2.5} and PM₁₀) from traffic. Victor R.J.H. Timmers & Peter A.J. Achten, *Non-Exhaust PM Emissions from Electric Vehicles*, 134 *ATMOSPHERIC ENV'T* 10, 14 (2016); see also Shill, *supra* note 8, at 558–61.

11. *Fatality Facts 2019—Yearly Snapshot*, INS. INST. FOR HIGHWAY SAFETY (Mar. 2021), <https://www.iihs.org/topics/fatality-statistics/detail/yearly-snapshot> [https://perma.cc/Q9MH-MZYQ].

12. Craig Gilbert, *Sen. Ron Johnson Is Telling People to Keep Coronavirus in Perspective*, MILWAUKEE J. SENTINEL (Mar. 18, 2020, 3:14 PM), <https://www.jsonline.com/story/news/politics/analysis/2020/03/18/coronavirus-sen-ron-johnson-says-keep-outbreak-perspective/5074145002> [https://perma.cc/ENY6-7AQ8].

has increasingly focused on how to manage the social implications of transportation projects.¹³

Changes in American law and policy, however, have lagged these scholarly developments. Other countries have made different choices.

Though much of Canada and Australia was, like the United States, developed after the advent of mass automobility, traffic deaths in those car-reliant countries claim fewer than half as many lives per capita as they do here.¹⁴ In Western Europe and Japan, the rates are lower still, with Japan seeing 31 deaths per million and France (48.4.), the U.K. (27.6), and Sweden (21.5) and their neighbors all far safer than the U.S. (112.5).¹⁵

Why did our transportation policy equilibrium settle on such a high death rate relative to our wealthy peers? That our road safety record is far behind that of even our most car-centric peers suggests the dominance of cars as a transportation mode cannot itself explain the phenomenon. The scholars in this Issue probe this question and reach a variety of conclusions, but common among them is the role of policy choices and the priorities of the people making them.

In that vein, it bears noting the disconnect between scholarly and mainstream-elite discussions of transportation policy. There are important exceptions, including notably U.S. Secretary of Transportation Pete Buttigieg, but U.S. policymakers tend to dismiss, or only haltingly embrace, proven transportation interventions with a long record of success, like dedicated bus lanes, subways, and high-speed rail.¹⁶ They often prefer unproven blue-sky ideas marketed by those who stand to profit from their inception, such as Elon Musk's proposed Hyperloop. Grave technical and conceptual flaws in that project have been widely exposed, starting at least in 2013.¹⁷ But these

13. MARLON G. BOARNET & RANDALL CRANE, *TRAVEL BY DESIGN: THE INFLUENCE OF URBAN FORM ON TRAVEL* 17 (2001).

14. See *Transport: Road Accidents*, OECDILIBRARY, https://www.oecd-ilibrary.org/transport/road-accidents/indicator/english_2fe1b899en?parentId=http%3A%2F%2Finstance.metastore.ingenta.com%2Fcontent%2Fthematicgrouping%2F8dacf707-en [<https://perma.cc/KT9E-DPHG>], (showing that in 2018, Canada had 51.9 road deaths per 1 million people while the United States had 112.5).

15. *Id.*

16. See, e.g., Audrey G. McFarlane, *Black Transit: When Public Transportation Decision-Making Leads to Negative Economic Development*, 106 IOWA L. REV. 2369, 2372 (2021) ("In and around that same time, the Republican governors of Wisconsin, Ohio, New Jersey and Florida also rejected allocated funds for rail projects that had also been in the planning process under prior administrations."); See Noah M. Kazis, *Transportation, Land Use, and the Sources of Hyper-Localism*, 106 IOWA L. REV. 2339, 2356–60 (2021) (documenting how "transportation planning agencies are intentionally and consciously empowering oppositional voices" to foreclose policy reform).

17. See Alon Levy, *Loopy Ideas Are Fine, if You're an Entrepreneur*, PEDESTRIAN OBSERVATIONS (Aug. 13, 2013), <https://pedestrianobservations.com/2013/08/13/loopy-ideas-are-fine-if-youre-an-entrepreneur> [<https://perma.cc/6GCX-YRH9>] ("My specific problems are that Hyperloop a) made up the cost projections, b) has awful passenger comfort, c) has very little capacity, and d) lies about energy consumption of conventional [high-speed rail]."). Levy's analysis of Musk's

deficiencies have not prevented cities, regional planning organizations, and state agencies from spending taxpayer money on studies and courting Musk,¹⁸ who has thus far dodged serious regulatory responses to his and his companies' misleading claims and dangerous conduct.¹⁹

"Transportation" as a political issue is a tale of two cities. Among the transportation privileged, a taste for convenience and flashy solutions to social problems is pervasive. Traces of this can be found in casual conversation. At a dinner party, complaints of traffic, speeding tickets, and airline baggage fees are likely to elicit sympathetic looks rather than indifference. Similarly, one is more likely to encounter talk of self-driving or even flying cars—"like Uber meets Tesla in the air," as one leading investor termed it²⁰—than discussions on, for instance, the mobility barriers to voting,²¹ lifesaving vaccinations,²² and job or education access²³ that confront those who are among the 100 million

proposal is regarded as among the strongest early examples. *See, e.g.,* Angie Schmitt, *Is Your Local Government Falling for the Hyperloop Fantasy?*, STREETS BLOG USA (Apr. 11, 2017), <https://usa.streetsblog.org/2017/04/11/is-your-local-government-falling-for-the-hyperloop-fantasy> [<https://perma.cc/89Q7-VYG8>].

18. *See, e.g.,* Schmitt, *supra* note 17; *see also* Rehi Alaganar, *Hyperloop One's Vision for America*, VIRGIN HYPERLOOP BLOG (Apr. 6, 2017), <https://virginhyperloop.com/blog/vision-for-america> [<https://perma.cc/VY92-SX4Q>] (talking up benefits of the technology, if successful). The latter press release, styled as a blog post, is characteristic of the puffery around Hyperloop projects. For example, it notes that, "Close to two-thirds of Boulder County residents have been priced out of home ownership. A Hyperloop would enable breadwinners to build a career in Boulder's thriving tech hubs while commuting from Greeley, where median home prices are 60% lower," without addressing either why the Colorado college town's home prices are so unaffordable (tight constraints on supply in the face of soaring demand) or what would happen to prices in Greeley if access to Boulder became cheap and fast (they would increase). *Id.*

19. Susan Pulliam, Rebecca Elliott & Ben Foldy, *Elon Musk's War on Regulators*, WALL ST. J. (Apr. 28, 2021, 11:39 AM), <https://www.wsj.com/articles/elon-musk-tesla-spacex-regulators-crash-11619624227> [<https://perma.cc/35NL-DWNJ>].

20. *See* Cade Metz & Erin Griffith, *What Is a Flying Car?*, N.Y. TIMES (June 12, 2021), <https://www.nytimes.com/2021/06/12/technology/flying-cars.html> (quoting venture capitalist and LinkedIn co-founder Reid Hoffman). Beyond Hoffman's quote, the article is itself an example of this elite preference—a breezy exploration of "flying cars" (which currently resemble hybrid helicopter-planes), plumbing their technology, investment, and regulatory dimensions while leaving for another day the potentially devastating consequences for public health, safety, and quality of life that would likely accompany the introduction of millions of personal aircraft into urban and suburban neighborhoods.

21. *See, e.g.,* Justin de Benedictis-Kessner & Maxwell Palmer, *Driving Turnout: The Effect of Car Ownership on Electoral Participation* 1 (HKS Fac. Rsch. Working Paper Series, RWP20-032, 2020), <https://www.hks.harvard.edu/publications/driving-turnout-effect-car-ownership-electoral-participation> [<https://perma.cc/N3SA-YGZS>] ("Lack of access to a car depresses election day voter turnout by substantively large amounts across a variety of fixed-effects models that account for other environmental and voter characteristics. Car access creates the largest hindrance to voting for those people who live farther from the polls, for young voters, and for non-white voters.").

22. *See, e.g.,* Akilah Johnson, *Lack of Health Services and Transportation Impede Access to Vaccine in Communities of Color*, WASH. POST (Feb. 13, 2021, 4:26 PM), <https://www.washingtonpost.com/health/2021/02/13/covid-racial-ethnic-disparities> [<https://perma.cc/9DH8-GTJX>].

23. *See, e.g.,* Marlon G. Boarnet, Genevieve Giuliano, Yuting Hou & Eun Jin Shin, *First/Last Mile Transit Access as an Equity Planning Issue*, 103 TRANSP. RSCH. PART A 296, 296 (2017) ("[I]n

Americans who lack a driver's license.²⁴ More revealingly, a reference to "transportation" policy or problems is commonly understood as implicating the former set of personal frustrations rather than the core fairness concerns around the latter. Indeed, many law review articles have been written about self-driving cars,²⁵ the likely extent of whose promise (if ever successfully commercialized) is to alleviate *ennui* for suburban commuters or road trippers. But very few have been written about the significant social problems that are a byproduct of our car-centric transportation system.

Ameliorating the quotidian inconveniences of those who already enjoy privileged access to safe, comfortable, and reliable transportation has been the alpha and the omega of American transportation policy for a century. Those inconveniences do not, at a first approximation, rate as a top-tier policy priority, and thus emerged a pseudoscience of quantifying as an aggregate the tiny individual costs of congested traffic and structuring cost-benefit decisions around enhancing the speed of car travel, substantially mooting objections on grounds of pollution, mass dislocation, and traffic deaths.²⁶ Given the emphasis on convenience and comfort for those who could afford it, automobility, with its promise of private travel and door-to-door convenience, also crowded out consideration of public transportation; the predominant

the San Diego region, if transit riders walk to/from transit stops, low-wage job accessibility by car is almost 30 times larger than low-wage job accessibility by public transit.").

24. Shill, *supra* note 8, at 505 n.24 and accompanying text (performing this calculation by synthesizing Census and U.S. Department of Transportation statistics). Tens of millions of those who lack a license are of an appropriate age. *Id.* Of course, millions who have licenses nevertheless lack regular car access, especially in high-poverty areas where public transportation networks are weak. Between one quarter and one third of households in Hartford, Buffalo, Syracuse, and Detroit, for example, lacked a single vehicle in 2016. See Mike Maciag, *Vehicle Ownership in U.S. Cities Data and Map: Statistics on Car-Free Households and Numbers of Vehicles per Household for Cities*, GOVERNING (Dec. 9, 2014), <https://www.governing.com/archive/car-ownership-numbers-of-vehicles-by-city-map.html> [<https://perma.cc/RZ7B-3YDU>].

25. A recent Westlaw search for "self-driving" yielded over 1,000 hits from the Law Reviews & Journals subcategory of Secondary Sources. WESTLAW, 1.next.westlaw.com [<https://perma.cc/3C6Z-SQMB>].

26. This problem has been known for some time. See, e.g., Donald C. Shoup, *Truth in Transportation Planning*, 6 J. TRANSP. & STAT. 1, 1 (2003) ("Transportation engineers and urban planners often report uncertain estimates as precise numbers[,] This paper presents data on parking and trip generation rates to illustrate the misuse of precise numbers to report statistically insignificant estimates. . . . When decisionmakers use th[em] . . . for city planning, they create a city where everyone drives to their destinations and parks free when they get there."); J. Michael Thomson, *Reflections on the Economics of Traffic Congestion*, 32 J. TRANSP. ECON. & POL'Y 93, 101 (1998) ("Traffic economics is heavily dependent on the value of time, on which a great deal of research was carried out in the 1960s and 1970s, after which the subject seemed to be exhausted. It should be admitted, however, that our knowledge of this subject was, and still is, poor, and the values used in transport studies are generally crude."); see also TODD LITMAN, VICTORIA TRANSP. POL'Y INST., *CONGESTION COSTING CRITIQUE: CRITICAL EVALUATION OF THE "URBAN MOBILITY REPORT"* 7-9 (2014), <https://core.ac.uk/download/pdf/30676644.pdf> [<https://perma.cc/9GJR-2JLV>].

question was how to make driving faster by reducing “motorist delay.”²⁷ This emphasis was (and remains) encouraged by politicians, mainstream news, and opinion leaders, who tended towards the same orientation (and some of whose salaries rely on ad buys or other material support from the same industry²⁸). As the authors in this Issue detail, this development was not merely naïve in motivation and did not have neutral outcomes.

The outlier situation the United States finds itself in is the harvest of a particular variety of the American dream planted during the era of *Lochner* and Jim Crow and cultivated into dominance by law for a century.²⁹ Powered by law in unique ways, the cracks of our society are visible everywhere in the transportation built environment. Abundant parking and absent sidewalks; free roads and pay-per-ride transit; urban arterials and adjacent asthma clusters; fast planes and slow trains; supersized vehicles and unprotected bicycle lanes; distracted driving and disrespected crosswalks; buses that do not come and traffic that does not stop; and, most of all, the rhetoric of personal choice and the reality of public policy—all are, in part, products of law.

Though they are rarely taught this way, transportation regulation can even be found in the foundational cases of the law school curriculum. *Plessy v. Ferguson*,³⁰ *Erie Railroad Co. v. Tompkins*,³¹ *Gibbons v. Ogden*,³² *Gorton v. Doty*,³³

27. A vast literature exists on this topic. See, e.g., WILLIAM L. GARRISON & DAVID M. LEVINSON, *THE TRANSPORTATION EXPERIENCE: POLICY, PLANNING, AND DEPLOYMENT* 328–29 (2014); DAVID W. JONES, *MASS MOTORIZATION AND MASS TRANSIT: AN AMERICAN HISTORY AND POLICY ANALYSIS* 129–30 (2008); NORTON, *supra* note 8 at 259; CLAY MCSHANE, *DOWN THE ASPHALT PATH: THE AUTOMOBILE AND THE AMERICAN CITY* 203–28 (1994); KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 163–71 (1985); see also Sara C. Bronin, *Rules of the Road: The Struggle for Road Safety & The Unmet Promise of Federalism*, 106 IOWA L. REV. 2153, 2164 (2021); Shill, *supra* note 8, at 500–04.

28. For instance, in 2018, automobile manufacturers alone spent \$35.5 billion on advertising worldwide, over half of it in the United States. See ZENITH, *GLOBAL INTELLIGENCE: AUTOMOTIVE ADSPEND FORECASTS* 4 (2019), <https://www.zenithmedia.com/wp-content/uploads/2019/03/Automotive-adspend-forecasts-2019-executive-summary.pdf> [<https://perma.cc/92W7-M3G6>]. This leaves out the interests of trucking; auto dealers; tire manufacturers; other suppliers; and, of course, the oil industry. Far from a diffuse array of actors, these interests will soon enter their second century of joint lobbying through trade associations and other collective action tools. See generally NORTON, *supra* note 8 (documenting the industry’s rising awareness and organizational efforts under the chosen banner of “motordom” to engage in political and public relations efforts).

29. See *infra* Part II.

30. See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding a state law mandating race-segregated railcars on the grounds of “separate but equal”).

31. See generally *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938) (concerning federal common law).

32. See generally *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824) (concerning the Interstate Commerce Clause).

33. See generally *Gorton v. Doty*, 69 P.2d 136 (Idaho 1937) (concerning the principal-agent relationship in lending one’s car for a particular purpose).

South Dakota v. Dole,³⁴ and *Penn Central Transportation Co. v. New York City*³⁵ all helped define the relationship of law to transportation and society.³⁶ But the bulk of transportation regulation cuts a lower profile in law. Even as “historians, sociologists, geographers, political scientists, urban planners, journalists, cultural critics, and artists”—as well as economists, engineers, psychologists, and even theologians—have written extensively “on the far-reaching effects of cars and highways on transportation and work patterns, the environment, social customs, and popular culture,”³⁷ the topic has, to date, been subject to very limited examination by legal scholars.

The Essays that follow comprise an opening volume in a new literature on law and transportation.

II. BIG QUESTIONS, SLICED FROM FOUR DIFFERENT ANGLES

Transportation policy can be found not only in master plans and budgets, but in the law, at all levels of government and across multiple substantive areas of law. In the United States, transportation is dominated by the car. For this reason, it touches on virtually all public policy questions, because the car, while wondrously useful, is, at scale, a font of externalities like no other.

Transportation emissions, led by private cars, are the largest source of U.S. greenhouse gases.³⁸ Between emissions and crashes, cars now claim more American lives each year than guns and opioids combined (about 37,000 via crashes and 58,000 by pollution, or 95,000 total).³⁹ These costs are not evenly distributed. For example, even after controlling for differences in walking rates, when compared with white, non-Hispanic pedestrians, Black pedestrians are two-thirds more likely to die from being struck by motorists and Native American pedestrians are more than twice as likely.⁴⁰ Meanwhile, people of color make up a disproportionately high share (60 percent) of

34. See generally *South Dakota v. Dole*, 483 U.S. 203 (1987) (concerning conditional highway appropriations).

35. See generally *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978) (discussing regulatory takings—here, a city’s ruling that the landowner could not construct a skyscraper in Midtown Manhattan atop one the largest rail hubs in the United States).

36. The law school chestnut of *Palsgraf v. Long Island R.R.*, 162 N.E. 99 (N.Y. 1928) (concerning foreseeability in the tort of negligence) arguably belongs in this category as well, but its influence is more indirect.

37. COTTEN SEILER, *REPUBLIC OF DRIVERS: A CULTURAL HISTORY OF AUTOMOBILITY IN AMERICA 1* (2008).

38. *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> [<https://perma.cc/CHU7-BMW8>] (last updated Apr. 14, 2021).

39. Shill, *supra* note 8, at 501.

40. SMART GROWTH AM. & THE NAT’L COMPLETE STS. COAL., *DANGEROUS BY DESIGN 2021*, at 27 (2021), <https://smartgrowthamerica.org/wp-content/uploads/2021/03/Dangerous-By-Design-2021-update.pdf> [<https://perma.cc/2BEW-HYUW>].

public transit users,⁴¹ a class of road users whom U.S. policy, and in some cases law, systematically disadvantages.

An increasing focus on distributional questions, climate change, and public health has created an environment that is more open to re-examining the twentieth century transportation paradigm. For example, in a variety of cities and states, measures have advanced recently to legalize land uses that require less driving (e.g., apartment buildings with a corner store on the ground floor); add dedicated bus and bike facilities to make those modes a realistic option; expand sidewalks; remove urban freeways built during urban renewal; and automate enforcement of traffic laws or remove them from police jurisdiction. Together, these reflect a shift beyond a goal of maximum “mobility,” in the sense of *fast movement*, to a more functional conception of “accessibility,” signifying the ease of *reaching places*—jobs, schools, grocery stores, and so on—which, after all, is the purpose of transportation in the first place.⁴² They represent a move in spirit away from longstanding policy—for example, a decision made at the height of urban renewal, when federal transit programs were formally reorganized to facilitate mobility rather than land use policy objectives.⁴³

The Essays in this Issue and the presentations that were made at the Symposium engage these questions from many perspectives. At the event itself, we grouped them into four categories; this Subpart follows the same organization. The law professors (together with one professor from another discipline, as a co-author) wrote Essays for the Issue. In addition, Beth Osborne, Director of Transportation for America, and the Honorable Ray LaHood, 16th U.S. Secretary of Transportation, delivered keynote addresses. Videos of each presentation are available on the University of Iowa College of Law YouTube Channel.⁴⁴ A brief summary follows.

41. AM. PUB. TRANSIT ASS'N, *supra* note 7, at 4.

42. See generally JONATHAN LEVINE, JOE GRENGS & LOUIS A. MERLIN, FROM MOBILITY TO ACCESSIBILITY: TRANSFORMING URBAN TRANSPORTATION AND LAND-USE PLANNING (2019) (arguing that transportation policy should focus on accessibility of destinations as opposed to speed of travel as such).

43. See Yonah Freemark, *Promoting “Orderly and Sound Growth”: 1960s Debates Over Administering Public Transportation in Service of Mobility or Regional Planning*, J. URB. HIST., May 2021, at 1–2.

44. Iowa Law, *Symposiums and Conferences*, YOUTUBE, <https://www.youtube.com/playlist?list=PLe5uZagJoM784oGEbZQROV-jrpTfsUL3o> [<https://perma.cc/447G-gEY4>] (last updated Nov. 13, 2020).

A. TRANSPORTATION PLANNING AND LAND USE

There exists “a fundamental complementarity between transportation and land use,”⁴⁵ including land use law.⁴⁶ For this reason, the Symposium featured two panels on Transportation Planning and Land Use. Jonathan Levine, Professor of Urban and Regional Planning at the University of Michigan, framed the discussion with his presentation, “Transportation Policy Entrenchment: Institutional Barriers to Accessibility-Based Planning.”⁴⁷ Professor Levine emphasized the “derived” nature of transportation demand—which is to say that, overwhelmingly, the goal of the users of a transportation system is not to *go*, but to *arrive*, at a place.⁴⁸ While conceptually simple, almost banal, this observation upends decades of transportation planning optimized for ease of achieving speed rather than ease of reaching destinations the user deems useful.⁴⁹

Sara Bronin, Professor at the Cornell College of Architecture, Art, and Planning and Associated Faculty Member at Cornell Law School, writes about the regulation of road safety as a worst-case example of federalism, where states and cities ostensibly enjoy considerable freedom of planning but their efforts are substantially centralized by the federal government, specifically various vehicle and traffic standards adopted by the U.S. Department of Transportation and national nongovernmental organizations that frustrate local steps towards reform.⁵⁰ Janice Griffith, Professor at Suffolk University School of Law, writes about Metropolitan Planning Organizations (“MPOs”), which are federally created entities that cluster around metropolitan areas (sometimes crossing state lines) and engage in transportation and other regional planning.⁵¹ Professor Griffith writes that MPO decision power rests with the local elected officials who comprise them, and notes that MPOs are

45. Devin Michelle Bunten & Lyndsey Rolheiser, *People or Parking?*, 106 HABITAT INT’L, no. 102289, at 2 (2020). Indeed, there is an entire journal dedicated to the nexus between the two, *The Journal of Transport and Land Use*.

46. Shill, *supra* note 8, at 535–55; Robert C. Ellickson, *The Zoning Strait-Jacket: The Freezing of American Neighborhoods of Single-Family Houses* 24–25 (unpublished manuscript), papers.ssrn.com/sol3/papers.cfm?abstract_id=3507803 [https://perma.cc/QH8T-HQJA]; David Schleicher, *How Land Use Law Impedes Transportation Innovation*, in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY 38, 44 (Lee Anne Fennell & Benjamin J. Keys eds., 2017).

47. Iowa Law, *The Future of Law and Transportation Symposium 2020 | Transportation Planning and Land Use I*, YOUTUBE, at 16:38–30:04 (Nov. 11, 2020), https://www.youtube.com/watch?v=JvOc-6rco4o&list=PLe5uZagJoM784oGEbZQROV-jrpTfsUL3o&index=1 [https://perma.cc/R5HE-PQSS].

48. *Id.*

49. *Id.* See generally LEVINE ET AL., *supra* note 42 (discussing the conceptual and practical advantages of destination access as a goal over the narrower object of maximum vehicular speed).

50. Bronin, *supra* note 27, at 2164–67.

51. Janice C. Griffith, *Evolution of Metropolitan Planning Organizations (MPOs) into Multi-Functional Regional Roles*, 106 IOWA L. REV. 2241, 2244 (2021).

often constituted in ways that dilute the voting power of urban officials in favor of suburban counterparts, undermining their claim to democratic legitimacy.⁵² She details several reforms.⁵³ Noah Kazis, a Legal Fellow at New York University School of Law, writes about NIMBYism in the transportation context.⁵⁴ Privileged NIMBY groups, whose moniker comes from the famous rallying cry of “not in my backyard,” have been identified as a leading barrier to reform in housing politics.⁵⁵ He argues that NIMBYs have comparatively fewer and less powerful levers at their disposal to obstruct efforts at reform in the transportation space, and yet they frequently succeed in doing so all the same.⁵⁶ His Essay provides cause for reflection among scholars of cities, housing, and transportation alike.

Audrey McFarlane, Professor at the University of Baltimore School of Law, writes about the decision of the State of Maryland (mainly, its governor) to cancel a planned subway line that would primarily have benefited African Americans living in Baltimore and to redirect the funds that were allocated to it to highways instead.⁵⁷ The highways, it was understood, would primarily be used by white suburban commuters.⁵⁸ Professor McFarlane argues that this decision, and the grant of discretion that enabled it, should be understood in the historical context of racism in transportation planning.⁵⁹ Darien Shanske, Professor of Law at the University of California-Davis, and Deb Niemeier, Professor of Engineering at the University of Maryland, write about sublocal tax districts and their influence on sprawl.⁶⁰ While the role of federal policy in encouraging this form of development is well documented, Professors Shanske and Niemeier highlight the role of specific taxing districts in California known as Community Facilities Districts (“CFDs”), which have counterparts in many other states.⁶¹ They conclude that CFDs subsidize sprawl, impose arbitrary tax burdens, increase segregation, and have regressive effects on the incidence of the tax burden.⁶² Kenneth Stahl, Professor at Chapman University School of Law, writes about integrating

52. *Id.* at 2264–65.

53. *Id.* at 2273–79.

54. *See* Kazis, *supra* note 16, at 2353–60.

55. *See, e.g.*, CONOR DOUGHERTY, GOLDEN GATES: FIGHTING FOR HOUSING IN AMERICA 3 (2020); KATHERINE LEVINE EINSTEIN, DAVID M. GLICK & MAXWELL PALMER, NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA’S HOUSING CRISIS 4–5 (2019).

56. Kazis, *supra* note 16, at 2353–60.

57. McFarlane, *supra* note 16, at 2371–72 (discussing instances in which governmental funds for infrastructure projects which would benefit Black communities are instead distributed to highway projects in predominantly white areas).

58. *Id.* at 2381.

59. *Id.* at 2370–72, 2377.

60. *See* Darien Shanske & Deb Niemeier, *Subsidizing Sprawl, Segregation, and Regressivity: A Deep Dive into Sublocal Tax Districts*, 106 IOWA L. REV. 2427 (2021).

61. *Id.* at 2429.

62. *Id.* at 2430.

transportation policy into the land use curriculum.⁶³ Professor Stahl's Essay ties together many of the themes in this panel, and while its motivation is pedagogical, it will also be of great value to scholars and practitioners. For example, it illuminates many arcane but critical components of transportation and land use policy, ranging from traffic studies to zoning variances to the measurement of traffic for purposes of environmental impact reviews. It is enriched by photos and other visual aids that will be of assistance to anyone interested in deepening their understanding of transportation policy.

B. RIGHTS OF WAY AND PUBLIC SPACE

Where public space is scarce or contested, its use frequently involves competing claims to space for navigational or other purposes. Motorized travel raises the stakes of conflict in these spaces exponentially because it involves heavy machines moving under the control of individual operators at a high rate of speed. Consider the gravity of having your arm brushed accidentally while walking in a shopping mall or even having your foot stepped on in a packed rush-hour subway car versus being struck with a 5,000-pound vehicle moving at 30 (let alone 70) miles per hour. The car and the paved road that enabled it to travel quickly necessitated the development of signalization—first stop signs and traffic police, then traffic lights and other devices. But while those solutions may be mechanical in part, the conflicts they mediate and the systems they construct are unavoidably human.

Tara Goddard and David Prytherch, Professors of Urban Planning at Texas A&M University and Geography at Miami University, respectively, presented on the concept and operation of the right of way.⁶⁴ The focus of Professor Goddard's talk was the effect of news reports of traffic crashes on audience attribution of responsibility. She conducted a content analysis of 200 local news articles, which found that news coverage tended to shift blame toward bicyclists and pedestrians and away from drivers.⁶⁵ She also discussed evidence from an experiment that presented different versions of a report of a traffic crash and found that differences in the news report's attribution of blame had a statistically significant effect on respondents' own attribution of blame and preferred solutions.⁶⁶ Professor Prytherch's focus was on mobility

63. See Kenneth A. Stahl, *Incorporating Transportation Topics into the Land Use Curriculum*, 106 IOWA L. REV. 2451 (2021).

64. See Iowa Law, *The Future of Law and Transportation Symposium 2020 | Rights of Way and Public Space Panel*, YOUTUBE, at 1:10–15:01, 43:12–58:57 (Nov. 11, 2020), [https://www.youtube.com/watch?v=tOT15Nk2D8o&list=PLc5uZag\]oM784oGEbZQROV-jrpTfsUL3o&index=2](https://www.youtube.com/watch?v=tOT15Nk2D8o&list=PLc5uZag]oM784oGEbZQROV-jrpTfsUL3o&index=2) [<https://perma.cc/9579-UGF6>].

65. Kelcie Ralph, Evan Iacobucci, Calvin G. Thigpen & Tara Goddard, *Editorial Patterns in Bicyclist and Pedestrian Crash Reporting*, 2673 TRANSP. RSCH. REC.: J. TRANSP. RSCH. BD. 663, 663 (2019).

66. Tara Goddard, Kelcie Ralph, Calvin G. Thigpen & Evan Iacobucci, *Does News Coverage of Traffic Crashes Affect Perceived Blame and Preferred Solutions? Evidence from an Experiment*, 3 TRANSP. RSCH. INTERDISC. PERSPS. 1, 1–4 (2019).

justice, or the notion that road users have a rights-based claim to the street and to the city. He focused on the interaction between this philosophical and normative argument and the disciplines of geography and law, in particular traffic law. This field of law can be understood as containing overlapping but distinct symbolic and operational layers. It mandates that motorists take care to avoid striking vulnerable road users like pedestrians, for example—but by allowing high speed limits and sharply limiting pedestrian crossings, it also facilitates fast driving to the exclusion of other uses of street space, working a *de facto* allocation of that space to the driver.⁶⁷

Vanessa Casado Pérez, Professor at Texas A&M University School of Law, writes about pedestrian policy, with a focus on the economics of sidewalks.⁶⁸ She evaluates the benefits and costs of enhancing infrastructure for walking and wheelchair use and weighs social and private models of paying for their construction and maintenance.⁶⁹ She argues that developers should be required to build more walkable space, which would enhance the walkability of both their own developments and the surrounding area, reducing the future costs of road maintenance.⁷⁰ Jamila Jefferson-Jones, Professor at Wayne State University Law School, writes about “Driving while Black” as a social and legal phenomenon.⁷¹ She begins with a discussion of slavery and Reconstruction, noting the policing (both official and unofficial) to which Black freedom of movement was subject long before the automobile.⁷² She contends that the “open road” concept of vehicular freedom has historically been denied to Black Americans,⁷³ and is limited today through state, as well as private, violence. Professor Jefferson-Jones argues that the use of traffic law to harass Black road users is an example of enforcing racial hierarchy in public spaces.⁷⁴

67. See DAVID PRYTHERCH, *LAW, ENGINEERING, AND THE AMERICAN RIGHT-OF-WAY: IMAGINING A MORE JUST STREET* 48–51 (2018); see also Bronin, *supra* note 27, at 2155–57 (discussing the problems posed by unsafe vehicles and dangerous streets); Shill, *supra* note 8, at 506–35 (overviewing the history of traffic law subsidies); Michael Lewyn, *The Criminalization of Walking*, 2017 U. ILL. L. REV. 1167, 1169–73 (arguing jay-walking laws are the result of special-interest legislation). For more on mobility justice, see generally KAREL MARTENS, *TRANSPORT JUSTICE: DESIGNING FAIR TRANSPORTATION SYSTEMS* (2016).

68. Vanessa Casado Perez, *Reclaiming the Streets*, 106 IOWA L. REV. 2185, 2186–89 (2021).

69. *Id.* at 2191–95.

70. *Id.* at 2212–13.

71. Jamila Jefferson-Jones, “Driving While Black” as “Living While Black”, 106 IOWA L. REV. 2281, 2282–84 (2021).

72. *Id.* at 2285–87.

73. *Id.* at 2282. For a historical perspective on the evolving legal concept of the “open road,” see generally SARAH A. SEO, *POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM* (2019).

74. Jefferson-Jones, *supra* note 71, at 2290–91.

C. MOBILITY, SEGREGATION, AND POLARIZATION

Decisions about the route and width of highways were used by midcentury urban planners to accomplish broader social policy goals, including racial segregation, the destruction of housing in low-income communities (which elites believed to be an independent source of social dysfunction), and the facilitation of speedy travel from white suburbs on highways cut through largely poor, Black, and immigrant urban neighborhoods to the central city.⁷⁵ Clayton Nall, Professor of Political Science at the University of California-Santa Barbara, presented on this topic, using a national, as well as local, politics lens.⁷⁶ He drew on his recent book, “The Road to Inequality: How the Federal Highway Program Polarized America and Undermined Cities,” to argue that highways facilitated population sorting by geography, along racial and political lines, which in turn fostered political polarization.⁷⁷ Professor Nall posited both selection and treatment explanations for these trends, and in addition to noting broader implications, argued that they present challenges to efforts at environmentally sustainable transportation reform.⁷⁸

Deborah Archer, Professor at New York University School of Law, writes about racial disparities in public investment in transportation infrastructure that “helped make many Black communities inhospitable for health, success, and economic opportunity.”⁷⁹ She notes how these disparities exacerbated the severity of COVID-19 in Black neighborhoods because the urban highways that were punched through such neighborhoods generate high levels of toxic pollution that contributed to a higher rate of underlying health conditions which, in turn, made the people who lived there more vulnerable to the virus.⁸⁰ Professor Archer laments that “transportation policy has not been widely embraced as a pressing civil rights concern.”⁸¹ Some transportation scholars have posited transportation justice as a way of improving civil rights; in her

75. See, e.g., Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: Advancing Racial Equity Through Highway Reconstruction, 73 VAND. L. REV. 1259, 1273–74 (2020) (discussing how the interstate highway system was built to accomplish policy goals); Campbell Haynes, *One Mile North*, 8 BELMONT L. REV. 1, 18–20 (2020) (discussing the effects I-40 had on North Nashville).

76. See Iowa Law, *The Future of Law and Transportation Symposium 2020 | Mobility, Segregation, and Polarization*, YOUTUBE, at 0:58–18:48 (Nov. 11, 2020), <https://www.youtube.com/watch?v=50EhVs8awco&list=PLe5uZagJoM784oGEbZQROV:jrpTfsUL3o&index=4> [https://perma.cc/TM87-5T4D].

77. CLAYTON NALL, *THE ROAD TO INEQUALITY: HOW THE FEDERAL HIGHWAY PROGRAM POLARIZED AMERICA AND UNDERMINED CITIES* 23–51 (2018).

78. *Id.* at 107–35.

79. Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2127 (2021).

80. *Id.* at 2128.

81. *Id.* at 2129.

Essay, Professor Archer posits civil rights laws as a mechanism for advancing justice in transportation.⁸²

Daniel Rodriguez, Professor at Northwestern University School of Law, likewise addressed a topic that gained salience during the COVID-19 pandemic: the discretion of states to limit temporary interstate relocations, or what he calls “the problem of escape.”⁸³ He argues “escape,” neither a visit nor a permanent move, “is a meaningful category that describes individuals who flee from their homes for some period of time to take refuge elsewhere,” and his Essay analyzes its legal dimensions and explores some of the consequences “for the social, economic, and political conditions of contemporary America.”⁸⁴ Indeed, several states implemented quarantine requirements and other restrictions on out-of-state travelers in an attempt to inhibit their freedom to do just that.⁸⁵ There is some empirical evidence that flight, including interstate flight, helped to spread the virus and pass it from younger, healthier, and wealthier people to those who did not have the same advantages in resisting it,⁸⁶ and so tradeoffs may be unavoidable between public health, on one hand, and an expansive conception of the constitutional right to travel on the other.

D. TRANSPORTATION AND FINANCE

Questions at the intersection of transportation and finance are addressed by Pamela Foohey, Professor at Yeshiva University Cardozo School of Law, and Randall Johnson, Professor at Mississippi College School of Law. Professor Foohey’s focus is on auto lending.⁸⁷ Citing signs of distress in the auto lending market that began before the pandemic and worsened during it, she argues that a collapse in the sector was avoided only through extraordinary measures, including government support, but that the bubble that had built up pre-COVID-19 would likely not continue to inflate.⁸⁸ Partially drawing on past research,⁸⁹ she observes that the necessity of car ownership in most of America makes auto lending ripe for abuse and tricky to regulate.⁹⁰ She posits that weakness in household finances that developed during the pandemic may sap

82. *Id.* at 2149–51.

83. See Daniel B. Rodriguez, *Road Wary: Mobility, Law, and the Problem of Escape*, 106 IOWA L. REV. 2397, 2397–99 (2021).

84. See *id.* at 2398.

85. *Id.* at 2421.

86. Joshua Coven, Arpit Gupta & Iris Yao, *Urban Flight Seeded the COVID-19 Pandemic Across the United States 2* (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3711737 [<https://perma.cc/NAK4-R6XP>].

87. See generally Pamela Foohey, *Bursting the Auto Loan Bubble in the Wake of COVID-19*, 106 IOWA L. REV. 2215 (2021) (analyzing auto lending in COVID-19).

88. *Id.* at 2220–26.

89. See Pamela Foohey, Robert M. Lawless, & Deborah Thorne, *Driven to Bankruptcy*, 55 WAKE FOREST L. REV. 287, 306–32 (2020) (describing the statistical findings of a study on households which keep cars through bankruptcy proceedings).

90. Foohey, *supra* note 87, at 2226–30.

demand (or reduce the ability to pay) for auto loans for years to come.⁹¹ Further, Professor Foohey argues that state or federal interventions, if needed, should be geared towards broader goals, including reducing the imperative of car ownership given its many social costs.⁹²

Professor Johnson examines a public finance question relating to automobiles: differences in tolls owed by toll road users based on transponder ownership.⁹³ In Illinois, the focus of his study, when a driver who does not own a transponder fails to pay a cash toll, she must pay tickets, penalties, and fees; however, if the driver drives through a toll gate with a transponder that merely lacks an adequate balance, she enjoys various discounts and privileges in paying for the toll after the fact.⁹⁴ Marshalling data gathered via FOIA requests, Professor Johnson introduces a novel dataset and calculates the cost of this differential subsidy.⁹⁵ Deploying county-level data suggesting an uneven incidence, he urges the state to investigate possible disparate outcomes of its policy on the basis of transponder ownership.⁹⁶

III. CONCLUSION

Because the overwhelming majority of trips in the United States are taken by private vehicle, “the social costs of travel are, first and foremost, the social costs of the automobile.”⁹⁷ Those costs—and those trips—reflect private behavior in the public realm, influenced by policy and entrenched by law.

With important exceptions,⁹⁸ for over a century, law scholars have sat on the sidelines as important questions of transportation policy were decided by scholars and policy makers in other fields. That lawyers drafted some of the early documents, like the Uniform Vehicle Code and reams of motor vehicle safety regulations, makes this absence all the more notable. In this Issue, law scholars turn a critical and constructive eye towards the sources of law that make up our transportation network and determine its impacts on the general welfare and vulnerable populations. It is hoped that these Essays, the scholars who contributed them, and those who engage their work will chart a new, more productive course for legal scholarship on these subjects in the years to come.

91. *Id.* at 2223–25.

92. *Id.* at 2235–39.

93. *See generally* Randall K. Johnson, *Why Illinois Should Reevaluate Its Video Tolling (V-Toll) Subsidy*, 106 IOWA L. REV. 2303 (2021) (discussing the V-Toll Subsidy in Illinois and how it contributes to “moral hazard and public sector waste”). *Id.* at 2312.

94. *Id.* at 2305–08.

95. *Id.* at 2310–11, 2313.

96. *Id.* at 2315–17.

97. BOARNET & CRANE, *supra* note 13, at 17.

98. *See generally, e.g.*, JERRY L. MASHAW & DAVID L. HARFST, *THE STRUGGLE FOR AUTO SAFETY* (1990) (analyzing legal culture’s impact on the National Highway Traffic Safety Administration).