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From the Selected Works of Michael E Lewyn

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Pedestrians Under Attack

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ZONING AND LAND USE PLANNING

Pedestrians Under Attack

Michael Lewyn*

Review, Right of Way- Race, Class and the Silent Epidemic of Pedestrian Deaths in America, Angie Schmitt (Island Press, 2020).

Since 2009, pedestrian deaths in pedestrian/vehicle collisions have increased by over 50 percent in the United States, while such deaths *decreased* by 36 percent in Europe.¹ Pedestrian death rates tend to be highest in low-income neighborhoods and among persons of color.² In *Right of Way*, journalist Angie Schmitt tries to explain why American streets have become more dangerous for walkers, and suggests a variety of pro-pedestrian reforms. This book is worth reading not just for anyone concerned about traffic safety, but also for land use scholars and activists; Schmitt writes that street design as well as vehicle design has contributed to this wave of death.

I. What Went Wrong?

Schmitt fingers a wide variety of culprits for our growing death rates, but rejects attempts to blame pedestrians for

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¹See Angie Schmitt, *Right of Way- Race, Class and the Silent Epidemic of Pedestrian Deaths in America* 6 (2020).

²See Smart Growth America and National Complete Streets Coalition, 2019 *Dangerous by Design* 19 (highest death rates among Blacks and Native Americans), 21 (death rates are highest in lower-income areas; where the neighborhood income is under \$36,000, death rates roughly 50 percent higher than national average), at <https://smartgrowthamerica.org/wp-content/uploads/2019/01/Dangerous-by-Design-2019-FINAL.pdf> ("Dangerous").

being mowed down by cars and trucks. She shows that vehicles have become more dangerous in recent years, discusses demographic changes that may be relevant, and addresses the role of street design.

A. Too Many Cars And The Wrong Kind of Cars

After the 2008 financial crisis, gasoline costs decreased to 1940s levels.³ Because of lower gas prices and the 2010s economic recovery, vehicle miles traveled increased by 10 percent between 2009 and 2019.⁴ However, pedestrian deaths increased far more rapidly than miles driven.⁵ Schmitt suggests that one reason may have been the rise of sport utility vehicles (SUVs). In 1983, only 3 percent of U.S. vehicles sold were SUVs; today, almost half are.⁶ According to the National Highway Traffic Safety Administration (NHTSA) SUVs are two and a half times more likely than smaller cars to kill pedestrians when there is a collision.⁷

SUVs are dangerous primarily because they are higher than traditional cars, and their drivers therefore have difficulty detecting lower objects such as pedestrians. For example, one study showed that a traffic cone the size of a toddler was visible to a small Toyota Camry when the toddler was 39 inches or more away.⁸ By contrast, the same cone was not visible to a Cadillac Escalade SUV until it was at least 122 inches away.⁹

Furthermore, tall vehicles strike pedestrians in more dangerous places. The front end of a Ford Fiesta (a traditional car) is two and a half feet high, while the front end of some SUVs is almost four feet tall.¹⁰ As a result, an SUV is more likely to hit a pedestrian in the chest or abdomen, while

a traditional car is a tall SUV model (such as a Chevrolet), head on, the other half increased over number of fatalities 53 percent, while increased by 8

B. Demographics

Some parts of the country are more pedestrian friendly than others. In the South, metropolitan areas have more pedestrian deaths, but one area is the areas with the Sun Belt metropolitan growth. People are walking in the States.¹⁷

This theory of pedestrian deaths with regions. NHTSA with over 44 deaths per 10 (that is, by on

³See Schmitt, *supra* note 1, at 7 ("In 2015, on an inflation-adjusted basis, US gas prices were lower than they were in 1947").

⁴*Id.*

⁵*Id.* at 7.

⁶*Id.* at 8.

⁷*Id.* at 9.

⁸*Id.* at 80.

⁹*Id.*

¹⁰*Id.* at 83.

¹¹*Id.* at 84.

¹²*Id.* at 85. wheelchair users

¹³*Id.* at 84.

¹⁴See Gove, *Fatalities by State: GHSA-Pedestrian Fatalities by State*, for which the state fatalities were compared than SUVs, and

¹⁵See Dang, *See Dang*

¹⁶See Schmitt, *See Schmitt*

¹⁷*Id.*

a traditional car might hit the same walker in the legs.¹¹ And a tall SUV might strike a shorter-than-average pedestrian (such as a child or a wheelchair user) in the head.¹² Obviously, head or chest injuries are more likely to be fatal.¹³ On the other hand, fatalities caused by traditional cars also increased over the past decade. Between 2009 and 2018, the number of fatalities involving passenger cars increased by 53 percent, while the number of fatalities caused by SUVs increased by 81 percent.¹⁴

B. Demographic Change

Some parts of the United States are far more dangerous for pedestrians than others. In particular, “Sun Belt” regions in the South and West are especially risky. Of the 20 metropolitan areas with the highest pedestrian death rates, all but one are in the South or West.¹⁵ These regions are also the areas with the fastest population growth; the 22 largest Sun Belt metros have captured almost half of U.S. population growth since 2010.¹⁶ Schmitt thus infers that more people are walking in the most dangerous parts of the United States.¹⁷

This theory would be more persuasive if the number of persons without cars has increased in the most dangerous regions. NHTSA data shows that among metropolitan areas with over 44 pedestrian deaths in 2018, nine had over 2.5 deaths per 100,000 residents, and fatalities rose most rapidly (that is, by over 30 percent between 2014 and 2018) in four

¹¹Id. at 84.

¹²Id. at 85 (describing risks to children) 86–87 (describing risks to wheelchair users).

¹³Id. at 84–85.

¹⁴See Governors Highway Safety Association, Pedestrian Traffic Fatalities by State 21, at <https://www.ghsa.org/sites/default/files/2020-02/GHSA-Pedestrian-Spotlight-FINAL-rev2.pdf>. (“Governors”). I note that traditional cars and SUVs together account for less than 2/3 of fatalities for which the striking vehicle is known. 36 percent of these pedestrian fatalities were caused by other large vehicles such as vans, trucks larger than SUVs, and buses. *Id.*

¹⁵See Dangerous, *supra* note 2, at 3. The only exception is Detroit. *Id.*

¹⁶See Schmitt, *supra* note 1, at 9.

¹⁷Id.

of those metros: Memphis, Miami, Riverside, and Phoenix.¹⁸ However, the number of households without cars *decreased* in these areas—by 24 percent in Riverside, by 6 percent in Phoenix, and by less than 2 percent in Memphis and Miami.¹⁹ Thus, it seems unlikely that migration by carless households to Sun Belt cities is a major contributor to the rise of pedestrian deaths. On the other hand, more people in a metro area mean more cars—so this small pool of carless walkers may be fighting their way through a larger sea of cars than in the past.²⁰

Schmitt also suggests that gentrification and the growth of poverty in suburbia may have contributed to the problem; she writes that persons who cannot afford cars “are being pushed into more hostile environments on the suburban fringes, places that lack sidewalks and streetlights.”²¹ The NHTSA data discussed above has data for some individual counties in metropolitan Los Angeles and Miami. If Schmitt’s hypothesis were correct, both the number of carless households and the number of pedestrian deaths would have risen in suburban counties of those regions to a greater extent

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The aging c older America more slowly.²² consider the

¹⁸See Caitlin Webb, Geographic Summary of Pedestrian Traffic Fatalities 9, at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812822>.

¹⁹See Michael Lewyn, Are Pedestrians Moving to Danger?, Planetizen, Oct. 20, 2020, at <https://www.planetizen.com/blogs/110906-are-pedestrian-s-moving-danger>, citing United States Census Bureau, American Community Survey, at data.census.gov (Table B01201). In three other high-fatality metros (San Diego, Orlando, and Las Vegas), deaths rose by between 20 and 30 percent. In those metros, auto ownership did not increase or decrease significantly (i.e. by more than 1,000 households). Id.

²⁰In most of the metro areas discussed above, population grew more rapidly than in the metropolitan U.S. as a whole. The overall metropolitan population grew by about 7 percent (from 263 million people to 282 million) between 2010 and 2019. See United States Census Bureau, Metropolitan and Micropolitan Statistical Areas Population Totals and Components of Change: 2010–2019, at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-metro-and-micro-statistical-areas.html>. By contrast, the population of metropolitan Phoenix grew by roughly 17 percent (from 4.2 million to 4.9 million) and the populations of the Riverside and Miami regions grew by roughly 10 percent. Id. (Riverside grew from 4.2 million to 4.6 million, and the Miami/Fort Lauderdale/Palm Beach region grew from 5.5 million to 6.1 million).

²¹See Schmitt, *supra* note 1, at 11.

²²See Webb, deaths to 74 in R ties in Los Angel 225).

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²⁴Id. See We in Miami-Dade, Beach).

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²⁸Id. at 40–

than in urban counties. But this has not consistently been the case.

In metro Los Angeles, pedestrian fatalities have risen in suburban Riverside and Orange Counties, to a much greater extent than in more urban Los Angeles County.²² However, the number of carless households actually decreased by over 20 percent in Riverside between 2014 and 2018.²³ In South Florida, pedestrian fatalities actually increased far more rapidly in the most urban parts of the region: by 46 percent in relatively urban Miami-Dade County, as opposed to 24 percent in suburban Broward County and 14 percent in also-suburban Palm Beach County.²⁴ And in both Broward and Palm Beach Counties, the number of carless households actually decreased slightly.²⁵ Thus, the evidence does not seem to support the idea that migration to suburbia by carless households is a significant factor in the growth of fatal pedestrian/vehicle collisions.²⁶

The aging of America²⁷ might also be relevant. Although older Americans walk less than other Americans, they walk more slowly.²⁸ However, traffic signal policies often do not consider the needs of older Americans; the typical traffic

²²See Webb, *supra* note 18, at 5 (noting 2014–18 increase from 44 deaths to 74 in Riverside, and from 41 to 55 in Orange; by contrast, fatalities in Los Angeles County increased by less than 10 percent, from 209 to 225).

²³See Lewyn, *supra* note 19 (citation omitted). The number of households without vehicles did increase very slightly in Orange County, by less than 2,000, or roughly 4 percent. *Id.* However, the American Community Survey margin of error is over 3,000, so it is unclear whether vehicle ownership actually decreased in Orange County. *Id.*

²⁴*Id.* See Webb, *supra* note 18, at 5 (deaths increased from 74 to 106 in Miami-Dade, from 57 to 71 in Broward, and from 34 to 40 in Palm Beach).

²⁵See Lewyn, *supra* note 19 (citation omitted).

²⁶On the other hand, the data above refers to an extremely small number of suburban counties. A larger sample size might well yield different results. In addition, Census data on vehicle ownership refers to households, not to individuals. Thus, we do not know if the number of carless adults in multi-person households has increased, either in suburbs or elsewhere.

²⁷See Schmitt, *supra* note 1, at 42 (“People over sixty-five are the fastest growing demographic in the United States”).

²⁸*Id.* at 40–41.

light is timed for a walking speed of 3.5' per second, while older people may walk only 2.5 or 3' per second.²⁹ Where traffic lights change so rapidly, slower walkers are stuck in the middle of the street when a light changes, and thus are more likely to be struck and killed by vehicles.³⁰ On the other hand, deaths among older adults comprise a declining percentage of the national increase in pedestrian deaths: since 2009, the number of Americans over 70 killed in pedestrian/vehicle collisions has increased from 578 to 890 (roughly a 34 percent increase) while the number of fatally injured Americans between 20 and 69 increased from 3053 to 4911 (a 61 percent increase).³¹

C. Killer Streets

Most pedestrian deaths occur in streets known as suburban arterials—streets so wide that they encourage drivers to speed.³² In 2018, only 17 percent of pedestrian deaths were on streets with speed limits below 35 miles per hour.³³ Speed makes crashes far more likely to be fatal. If a pedestrian is struck by a car going less than 20 miles per hour, the risk of death from the crash is less than 5 percent.³⁴ By contrast, if the car is going 40 miles per hour, the risk of death rises to 65 percent.³⁵

D. Blaming The Victims

It could be argued that because of the rise of smartphones, pedestrians are simply more negligent than they once were. For example, one magazine article claims that “over a decade’s time, texting and walking have caused more than 11,000 injuries.”³⁶

Schmitt suggests that “distracted walking” is not a signifi-

²⁹Id. at 41.

³⁰Id.

³¹See IIHS/HLDI, *Fatality Facts 2018: Pedestrians*, at <https://www.iihs.org/topics/fatality-statistics/detail/pedestrians#trends> (“Facts”).

³²See Schmitt, *supra* note 1, at 19.

³³See Facts, *supra* note 31.

³⁴Id. at 28.

³⁵Id.

³⁶Lauren Cahn, *This Causes 11,000 Injuries- And You’re Probably Doing It Every Day*, *Reader’s Digest*, August 28, 2017, at <https://www.rd.com/article/texting-and-walking-injuries/>; see also Schmitt, *supra* note 1, at 12

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cant cause of the rising pedestrian death toll, for several reasons. First, even if, as suggested above,³⁷ distracted walking causes a thousand injuries per year, that number is less than 1 percent of all injuries to pedestrians.³⁸ Second, pedestrian injuries tend to occur at night, when smartphones might actually increase visibility and thus make crashes less likely.³⁹ Third, pedestrian injuries disproportionately affect low-income and elderly walkers, who are less likely to own smartphones.⁴⁰ Finally, Schmitt notes that smartphone use is just as common in European nations as it is in the United States, yet pedestrian deaths have declined in those nations.⁴¹

It could also be argued that because most pedestrian fatalities do not occur at intersections (also known as "crosswalks"),⁴² pedestrians are to blame for most collisions because they engaged in "jaywalking"—that is, crossing streets in the middle of a block rather than at a crosswalk.⁴³ Schmitt rejects this claim, on several grounds. First of all, crossing at an intersection is often not an option: for example, in some suburbs, intersections are a mile and a half apart, because municipal codes often mandate extremely

(citing government study claiming that 1500 pedestrian injuries per year caused by smartphones).

³⁷See Cahn, *supra* note 36.

³⁸See Schmitt, *supra* note 1, at 12 (137,000 pedestrian injuries treated in hospitals annually).

³⁹*Id.* at 13.

⁴⁰*Id.* See also Pew Research Center, Mobile Fact Sheet, at <https://www.pewresearch.org/internet/fact-sheet/mobile/> (only 53 percent of persons over 65 and 71 percent of persons earning under \$30,000 own smartphones; by contrast, over 90 percent of persons under 29 and persons earning over \$75,000 per year own smartphones).

⁴¹See Schmitt, *supra* note 1, at 12. Thus, it seems unlikely that distraction of drivers by cellphones, standing alone, is a major cause of pedestrian deaths and injuries.

⁴²*Id.* at 67. See also note 55 *infra* (all intersections are technically crosswalks, even in the absence of markings).

⁴³*Cf.* Lewyn, The Criminalization of Walking, 2017 U. of Ill. L. Rev. 1167, 1171–72 (2017) (adding that term also includes violation of commands of traffic signals, such as "Don't Walk" signals) ("Criminalization").

long streets.⁴⁴ As Schmitt notes, numerous studies suggests that pedestrians are less likely to cross mid-block where crosswalks are common.⁴⁵

Second, only 26 percent of pedestrian deaths involve midblock crossings.⁴⁶ In 8 percent of cases, pedestrians are in parking lots or driveways rather than on roadways.⁴⁷ In another 8 percent of cases, they are struck by a car traveling in reverse.⁴⁸ In 9 percent, they are traveling on a street with obstructed or non-existent sidewalks.⁴⁹ And in 5 percent of cases, the victim was working on a road construction project, responding to a disabled vehicle, or trying to save a child caught on the street.⁵⁰

Third, there is no correlation between strict jaywalking laws and pedestrian danger; in the United Kingdom, which does not forbid jaywalking, the pedestrian death rate is half that of the United States.⁵¹ Schmitt could also have noted that in Massachusetts, the fine for jaywalking is only \$1, making it effectively legal.⁵² Yet in recent years, the pedestrian death rate in that state has been 40–50 percent below the national average.⁵³ In 2018, only 12 states had lower fatality rates than Massachusetts.⁵⁴

Even where crosswalks exist, drivers often refuse to yield

⁴⁴ See Schmitt, *supra* note 1, at 71 (citing examples from Atlanta suburbs); see Lewyn, *New Urbanist Zoning for Dummies*, 58 Ala. L. Rev. 267, 287–88 (2006) (citing examples of municipal codes that mandate long, intersection-free streets).

⁴⁵ See Schmitt, *supra* note 1 at 71.

⁴⁶ *Id.* at 67.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 67–68.

⁵¹ *Id.* at 67.

⁵² See *Criminalization*, *supra* note 43, at 1181 (citation omitted).

⁵³ See *Governors*, *supra* note 14, at 11 (national fatality rate for first six months of 2019 was 0.92 per 100,000 people; Massachusetts rate is 0.46), 15 (in 2018 national fatality rate was 1.9 per 100,000, Massachusetts rate was 1.1).

⁵⁴ *Id.* This may be because one justification for jaywalking laws is highly questionable: the idea that pedestrians are safer if they are crossing at an intersection rather than midblock. This argument makes sense

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to pedestrians. Schmitt points out that two separate studies, one in Chicago and one in Milwaukee, show that drivers yield to pedestrians only 16 percent of the time at uncontrolled crosswalks (i.e. intersections without stop signs or traffic lights).⁵⁵ Another study showed that even where drivers stop for pedestrians, 11 percent of other drivers pass cars that *do* yield—a particularly dangerous action because the stopped car blocks the pedestrian's view of the moving car.⁵⁶

II. Some Solutions

Schmitt's solutions to the pedestrian safety crisis fall into two general categories: safer streets and safer vehicles.

A. Safer Streets

Since speed kills, Schmitt suggests slowing down traffic slightly. For example, between 1990 and 2014, 189 people were killed on New York's ten-lane Queens Boulevard.⁵⁷ In 2014, city officials added a bike lane and a bus lane, effectively narrowing the street. As a result, there was not a single fatality there between 2014 and 2018.⁵⁸ New York City

where traffic lights at intersections actually protect walkers from auto traffic. But sometimes, traffic lights only protect a walker from cars coming straight ahead, not from vehicles making left and right turns. For example, if I cross the street at a "Walk" sign, I probably won't be hit head-on by a car unless a driver ignores a red light, but I can still be struck by someone making a perfectly legal turn. That means that at a four-way intersection, I might have to look in multiple directions while crossing the street, in order to avoid motorists making turns. By contrast, if I cross midblock where there is no light, I need only avoid traffic coming directly at me, rather than motorists making turns. *See Criminalization*, supra note 43, at 1178.

⁵⁵ Schmitt points out that even police officers often do not know that most intersection are technically crosswalks, and that pedestrians therefore have the right to cross there. *See* Schmitt, supra note 1, at 65 (under Florida law, a non-striped intersection is a crosswalk unless "it is located on the block between two marked crosswalks with traffic signals.").

⁵⁶ *Id.* at 73.

⁵⁷ *Id.* at 23.

⁵⁸ *Id.* Schmitt might have also noted that Queens Boulevard includes three pedestrian islands, so that pedestrians do not have to cross the entire street at once. *See* Google Maps, 100-15 Queens Blvd., Forest Hills, NY, at [maps.google.com](https://www.google.com/maps/@40.74111,73.83411,15z); Schmitt, supra note 1, at 43 (suggesting that cities install "pedestrian islands in intersections that give walkers a safe, protected place to wait if they do not make it across in a single cycle.").

has also experimented with speed cameras to discourage speeding; these seem to have reduced fatalities.⁵⁹

Street crossings would be safer if pedestrians had more time to cross streets. For example, Montreal is planning to add several seconds of crossing time, to accommodate the most vulnerable road users such as the elderly and children.⁶⁰ Similarly, New York has added "leading pedestrian intervals" to some streets, which give pedestrians a five-to-seven second head start crossing the street before left-turning vehicles get a green light.⁶¹ That city's transportation department found that fatalities and serious injuries declined by 40 percent at intersections where these devices were installed.⁶²

Because most pedestrian fatalities occur at night,⁶³ street lighting is also important. In Detroit, 40 percent of streetlights were broken or missing as recently as 2014.⁶⁴ Since then, the city has issued bonds to repair 55,000 streetlights.⁶⁵ The city's pedestrian death rate fell by 40 percent at a time when the statewide pedestrian death rate was increasing, and pedestrians killed in low-light conditions decreased from over 20 per year to just one in 2017.⁶⁶

B. Safer Vehicles

Schmitt points out that even though the U.S. does regulate auto safety, its regulations do not consider the special needs

⁵⁹Id. at 20.

⁶⁰Id. at 107. Cf. John McFarlane, In 'paradigm change' Montreal prioritizes pedestrians over cars in traffic lights, CBC, Nov. 18, 2019, at <https://www.cbc.ca/news/canada/montreal/montreal-traffic-lights-pedestrians-1.5363500> (discussing Montreal policies in more detail).

⁶¹See Schmitt, *supra* note 1, at 111. Left turns are especially dangerous for pedestrians, because when a car is making a left turn, "a car's side pillar between the windshield and door obscures a driver's view." Id. One reform focused on this issue is to install posts at the center of intersections in order to force left-turning drivers to slow down. Id.

⁶²Id.

⁶³See Governors, *supra* note 14, at 17 (76 percent occur after dark, and nighttime fatalities have risen by 67 percent since 2009, more than four times the increase in daytime fatalities).

⁶⁴See Schmitt, *supra* note 1, at 37.

⁶⁵Id.

⁶⁶Id. at 38.

of pedestrians or cyclists.⁶⁷ By contrast, European nations have made more progress in this area. For example, the European Union's New Car Assessment Program tests and scores vehicles on head impacts to pedestrians; as a result, European automakers have raised vehicle hoods to soften possible blows to pedestrians.⁶⁸ In addition, the United Kingdom bans "bull bars"—steel or aluminum bars fixed to car grilles, which increase risks to pedestrians by concentrating the force of a blow. At a minimum, the U.S. could adopt these European rules.⁶⁹

III. Summary

After describing the alarming increase in U.S. pedestrian deaths, Schmitt explains why this is happening and what can be done about it. Her analysis focuses on two policy areas: safer streets and safer vehicles. Streets should be shorter, narrower, better-lit, and allow pedestrians more time to cross. Vehicle safety regulation should consider the needs of pedestrians as well as those of drivers.

⁶⁷Id. at 90.

⁶⁸Id.

⁶⁹Id. at 96-97.