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From the Selected Works of Michael E Lewyn

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New Scholarship on Streets

Michael Lewyn

ZONING AND LAND USE PLANNING

*Michael Lewyn**

New Scholarship On Streets

A great deal of scholarship and popular commentary has shown how government regulation contributes to automobile-dependent development.¹ Much of this scholarship has focused on zoning laws that segregate land uses and reduce density, thus making it difficult for Americans to walk to various destinations.² Some scholarship has addressed street design- but often, such commentary has focused on local subdivision regulations mandating wide streets and long blocks.³

However, a new generation of street design scholarship focuses on broader issues. The purpose of this article is to discuss three recent articles that focus on higher levels of government, and how they make streets and roads more dangerous for nondrivers (and for drivers as well). This issue is more important now than it was a few years ago: between 2014 and 2020, pedestrian deaths increased by nearly one-

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¹See, e.g., M. Nolan Gray, *Arbitrary Lines How Zoning Broke The American City And How to Fix It* 95-103 (2022); Michael Lewyn, *Government Intervention and Suburban Sprawl The Case For Market Urbanism* 95-147 (2017); Donald Shoup, *The High Cost of Free Parking* (2005).

²See, e.g., Gray, *supra* note 1, at 95-103; Lewyn, *supra* note 1, at 96-114.

³Lewyn, *supra* note 1, at 114-19. See also Ellickson, *Taming Leviathan: Will the Centralizing Tide of the Twentieth Century Continue Into the Twenty-First?*, 74 S. Cal L. Rev. 101, 111 (2000) ("subdivision regulations commonly require overly wide streets"); Boone, *Varying the Variance: How New York City Can Solve Its Housing Crisis And Optimize Land Use To Serve The Public Interest*, 81 Brook. L. Rev. 837, 850 (2016) (noting that such regulations "severely limit pedestrians").

third, and other vehicle-related deaths increased by 16 percent.⁴ By contrast, pedestrian deaths have declined in Europe during the same period.⁵

I. Manuals for Speeding

A 2021 article by Sara Bronin and Gregory Shill focuses on the Manual on Uniform Traffic Control Devices (MUTCD).⁶ MUTCD is drafted by a committee of traffic engineers,⁷ published by the Federal Highway Administration,⁸ and has been widely adopted by state and local governments.⁹ The purpose of this manual, according to its drafters, is to “establish national criteria for the use of traffic control devices that meet the needs and expectancy of road users.”¹⁰ Bronin and Shill argue, however, that rather than addressing the needs of all road users, MUTCD favors speeding drivers in ways that put other road users at risk.

In particular, MUTCD contains the “85th Percentile Rule,” a rule that “empowers traffic officials to adjust the speed limit to the speed at or below which 85% of vehicles are

⁴See Insurance Institute for Highway Safety and Highway Loss Data Institute, Fatality Facts 2020 Pedestrians, at <https://www.iihs.org/topics/fatality-statistics/detail/pedestrians> (increase from 4910 to 6516 for pedestrians, and 27834 to 32308 for all others).

⁵See Eurostat, Road accident fatalities- statistics by type of vehicle, at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Road_accident_fatalities_-_statistics_by_type_of_vehicle#Number_of_persons_killed_in_road_traffic_accidents_continuously_decreased_since_2010 (overall fatalities in European Union declined from 24,131 to 18,786 between 2014 and 2020; fatalities declined for both walkers and drivers).

⁶See Bronin and Shill, *Rewriting Our Nation's Deadly Traffic Manual*, 135 Harv. L. Rev. F. 1 (2021).

⁷Id. at 17 (manual's drafting guided by committee known as National Committee on Uniform Traffic Devices; members must be selected by one of a few sponsoring organizations, and because eligible organizations are traffic engineering organizations, members are traffic engineers).

⁸See Bronin, *Rules of the Road, The Struggle for Safety and the Unmet Promise of Federalism*, 106 Iowa L. Rev. 2153, 2166 (2021).

⁹Bronin, *Rules of the Road, The Struggle for Safety and the Unmet Promise of Federalism*, 106 Iowa L. Rev. 2153, 2166 (2021) (“many jurisdictions” have adopted MUTCD).

¹⁰See Bronin and Shill, *supra* note 6, at 5.

traveling in free-flowing traffic.”¹¹ This means that if just 15 percent of drivers are violating the posted speed limit, the speed limit gets raised.¹² Thus, the 85th Percentile rule delegates the law to the subset of drivers who are violating the law most aggressively.¹³

When drivers speed, more people die. For example, when a pedestrian is hit by a car traveling 20 miles per hour, that walker has a 5 percent chance of death.¹⁴ But when that same pedestrian is hit by a car traveling 40 miles per hour, the risk of death rises to 85 percent.¹⁵ If the car is traveling 50 miles per hour, the risk rises to nearly 100 percent.¹⁶ It logically follows that policies that promote fast traffic (such as the 85th Percentile rule) are likely to increase injuries and deaths to pedestrians as well.¹⁷

Bronin and Shill point out that the 85th Percentile rule is not supported by any research; the FHWA has conceded that earlier research that “purported that the safest travel speed is the 85th percentile speed is dated research.”¹⁸ The National Transportation Safety Board has also criticized the rule, stating that there is “no strong evidence that the 85th

¹¹Bronin and Shill, *supra* note 6, at 5.

¹²Bronin and Shill, *supra* note 6, at 5.

¹³Bronin and Shill, *supra* note 6, at 5.

¹⁴*See* Conner, *Traffic Justice: Achieving Equitable and Effective Traffic Enforcement in the Age of Vision Zero*, 44 *Fordham Urb. L.J.* 969, 978 (2017).

¹⁵Conner, *Traffic Justice: Achieving Equitable and Effective Traffic Enforcement in the Age of Vision Zero*, 44 *Fordham Urb. L.J.* 969, 978 (2017).

¹⁶Conner, *Traffic Justice: Achieving Equitable and Effective Traffic Enforcement in the Age of Vision Zero*, 44 *Fordham Urb. L.J.* 969, 978 (2017).

¹⁷And not just for pedestrians: according to the Insurance Institute for Highway Safety, higher speed limits have lead to increased death rates even on freeways, which presumably are less likely to have pedestrians than traditional streets and roads. See Insurance Institute for Highway Safety and Highway Loss Data Institute, *Speed limit increases are tied to 37,000 deaths over 25 years*, April 4, 2019, at <https://www.iihs.org/news/death/speed-limit-increases-are-tied-to-37-000-deaths-over-25-years>.

¹⁸Bronin and Shill, *supra* note 6, at 11 (citation omitted).

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percentile speed . . . [has] the lowest crash involvement rate for all road types.”¹⁹

MUTCD also discourages the use of techniques that might calm traffic and reduce injuries. In particular, MUTCD limits crosswalk construction by requiring an engineering study before a city installs crosswalks, thus raising the cost of installing new crosswalks.²⁰ Mid-block crosswalks are especially discouraged; MUTCD only allows them where five serious crashes have occurred within a year,²¹ or where pedestrian activity is already heavy.²² The absence of crosswalks makes it more likely that streets will be long strings of fast traffic, thus impeding walkability and safety.²³

If driving is fast and walking is dangerous, driving will seem more convenient, and more people will drive.²⁴ Bronin and Shill point out that more driving leads to higher greenhouse gas emissions, because automobiles are a major source of such emissions.²⁵ In addition, automobiles are a major source of other pollutants, such as particulate matter.²⁶

As an alternative, Bronin and Shill focus on changing procedure related to MUTCD’s creation. In particular, they suggest that the committee that drafts MUTCD become more diverse, including “[e]nvironmental and public health experts, along with people representing the concerns of low-

¹⁹Bronin and Shill, *supra* note 6, at 11 n. 55.

²⁰Bronin and Shill, *supra* note 6, at 5.

²¹Bronin and Shill, *supra* note 6, at 6 (“Five or more serious crashes . . . within a twelve-month period are necessary”).

²²Bronin and Shill, *supra* note 6, at 5 (“a mid-block crosswalk signal on a major street . . . requires the observation of more than 107 pedestrians crossing the street per hour”).

²³Bronin and Shill, *supra* note 6, at 5. Bronin and Shill also complain that the latest version of MUTCD adds a new chapter on automated vehicles. Bronin and Shill, *supra* note 6, at 6. But since this technology is currently quite experimental, it is not clear to me whether this part of MUTCD will have any practical impact anytime soon.

²⁴Bronin and Shill, *supra* note 6, at 7 (because of MUTCD policies, “driving is preferable to other modes of transportation”).

²⁵Bronin and Shill, *supra* note 6, at 7.

²⁶Bronin and Shill, *supra* note 6, at 7–8. Bronin and Shill add that the rise of electric vehicles will not alleviate the latter problem, because particulate matter comes mostly from “nonexhaust emissions” such as tires. Bronin and Shill, *supra* note 6, at 8.

income and minority groups."²⁷ Additionally, the committee's drafting discussions could be opened to the public.²⁸ Bronin and Shill suggest that these changes could lead to "more well-rounded regulations"²⁹ but admit that "good process does not guarantee good results."³⁰

In addition, Bronin and Shill suggest that MUTCD should allow more room for local flexibility. For example, the current draft of the next edition of MUTCD requires white crosswalks—but colorful crosswalks might slow down drivers and make a street more visually desirable.³¹ So rather than proposing a nationwide rule, MUTCD should allow more innovation, especially on dense areas with lots of pedestrians.³²

Another article by Prof. Bronin discusses both MUTCD and a variety of other anti-pedestrian rules that were created by private committees, but adopted by all levels of government.³³ She criticizes MUTCD for the same reasons mentioned in the Bronin/Shill article,³⁴ but also discusses two other model codes. She focuses on a street design manual created by the American Association of State Highway and Transportation Officials (AASHTO), an organization of bureaucrats originally founded to lobby for more highway funding.³⁵ The AASHTO manual, often known as the "Green Book,"³⁶ has been adopted by the federal government and every state department of transportation,³⁷ and sets standards on lane width, road width, and other design issues.³⁸ Bronin writes that the manual's "chief focus is to move cars

²⁷Bronin and Shill, *supra* note 6, at 17.

²⁸Bronin and Shill, *supra* note 6, at 17.

²⁹Bronin and Shill, *supra* note 6, at 17.

³⁰Bronin and Shill, *supra* note 6, at 17.

³¹Bronin and Shill, *supra* note 6, at 18.

³²Bronin and Shill, *supra* note 6, at 19.

³³See Bronin, *supra* note 8, at 2165–67.

³⁴Bronin, *supra* note 8, at 2166 (discussing 85th percentile rule and its negative side effects).

³⁵Bronin, *supra* note 8, at 2165.

³⁶Bronin, *supra* note 8, at 2174.

³⁷Bronin, *supra* note 8, at 2165.

³⁸Bronin, *supra* note 8, at 2165.

quickly and efficiently"³⁹ a mission that, on streets other than limited-access highways, can conflict with pedestrian safety.⁴⁰ In particular, "[t]he key indicator of a successful street is its vehicular 'level of service'—that is, the rate at which cars travel without being forced to queue at lights or to slow their speeds."⁴¹

Bronin adds that most states have also adopted the fire code written by the International Code Council (ICC), a membership body dominated by fire officials and construction industry professionals.⁴² The ICC code generally requires streets traveled by fire trucks to be 20 feet wide (excluding parking) and creates no standards for narrower streets.⁴³ Bronin suggests that streets that are in compliance with this code are "wider than necessary for ordinary vehicular travel."⁴⁴ Wide streets promote fast traffic, and thus make streets more dangerous for nondrivers.⁴⁵

Here too, Bronin focuses on process. She emphasizes that MUTCD, the Green Book, and the ICC code are all written by private associations in closed-door meetings before they are adopted by governments,⁴⁶ which means that an "ordinary person expressing concerns about, say, the impact of specific intersection requirements in the Green Book on disabled pedestrians, has no practical mechanism [to suggest revising] the Green Book to improve the specific design

³⁹Bronin, *supra* note 8, at 2165.

⁴⁰See *supra* notes 14–16 and accompanying text (describing conflict between speed and safety).

⁴¹Bronin, *supra* note 8, at 2165. Unfortunately, Bronin does not discuss the weaknesses of the AASHTO manual in detail. However, I have done so at Michael Lewyn, *Why Pedestrian-Friendly Street Design is Not Negligent*, 47 U. Louisville L. Rev. 339, 342–54 (2008) (pointing out that AASHTO manual is more pedestrian-friendly than it was in 1950s but nevertheless favors high speeds on the arterial streets that are most likely to contain shops and other businesses that might attract walkers).

⁴²See Bronin, *supra* note 8, at 2165.

⁴³Bronin, *supra* note 8, at 2166.

⁴⁴Bronin, *supra* note 8, at 2166.

⁴⁵See Kealy, *The Hudson Valley: A Natural Resource Threatened By Sprawl*, 7 Alb. L. Envtl. Outlook J. 154, 182 (2002) (referring to regulations mandating "wide streets for the fast moving of cars").

⁴⁶See Bronin, *supra* note 8, at 2174.

requirement.”⁴⁷ The leadership of these organizations is dominated by technical experts who are trained to achieve smooth vehicular traffic.⁴⁸ Bronin suggests that these organizations should be required to include nondrivers’ perspectives, either at the drafting level or through a more inclusive public vetting process.⁴⁹ Moreover, two of these three street design guidelines are only available to the general public for a fee;⁵⁰ Bronin suggests that because these guidelines are essentially government rules, they should not be copyrighted.⁵¹

Bronin adds that one reason that local governments do not deviate more frequently from AASHTO and MUTCD standards might be the fear of tort liability for negligent design of streets.⁵² The general rule is that local governments may not be liable for negligence made to street design, if a design decision is made “subject to a broad policy or if the design was selected or created by professionals reasonably exercising their responsibilities as government employees.”⁵³ It is well-settled law that local governments that follow the Green Book and similar codes are immune from liability under this doctrine.⁵⁴ Although common sense suggests that policy-driven deviations from such codes would be equally immune,⁵⁵ it is not yet clear whether this is the case because cases challenging such deviations have not yet been litigated.⁵⁶ Bronin suggests that states clarify the law with new statutes explicitly protecting street design reforms, or that courts make it clear that local governments are immune

⁴⁷Bronin, *supra* note 8, at 2174–75.

⁴⁸Bronin, *supra* note 8, at 2175.

⁴⁹Bronin, *supra* note 8, at 2183.

⁵⁰Bronin, *supra* note 8, at 2175 (noting the existence of litigation over “whether private-association codes that are adopted as law may be copyrighted”).

⁵¹Bronin, *supra* note 8, at 2175.

⁵²Bronin, *supra* note 8, at 2179.

⁵³Bronin, *supra* note 8, at 2179.

⁵⁴Bronin, *supra* note 8, at 2179.

⁵⁵I have argued that case law supports this view as well. See Lewyn, *supra* note 41, at 359–65.

⁵⁶See Bronin, *supra* note 8, at 2180.

for policy decisions that deviate from the Green Book and similar manuals.⁵⁷

Bronin concludes by implicitly answering the question: why should drivers (other than environmentalists to seek to reduce driving) care about safety for nondrivers? She writes that "[p]rotecting liberty [includes] freedom from bodily harm by government."⁵⁸ So when government makes streets dangerous, it violates that liberty. Moreover, now and then "each of us is a non-driver, even if we also drive."⁵⁹

⁵⁷ Bronin, *supra* note 8, at 2184.

⁵⁸ Bronin, *supra* note 8, at 2184.

⁵⁹ Bronin, *supra* note 8, at 2184.

II. Auto Safety: The Failure of Federal Regulation

An article by John Saylor focuses on auto safety standards that (unlike the rules discussed above) have been directly created by the federal government. The National Highway Traffic Safety Administration (NHTSA) regulates automobile safety in a wide variety of ways.⁶⁰ However, government fails to protect pedestrians (and motorists as well) from what Saylor calls crash incompatibility- the harm caused when a heavier, taller vehicle crashes into something smaller, such as a human being or a smaller car.⁶¹

For example, taller cars such as sport utility vehicles (SUVs) and other light trucks are dangerous to pedestrians, because a vehicle with higher mass and tall front ends is likely to hit a walker in the head or the chest.⁶² As a result of this heightened risk, the number of pedestrian deaths involving SUVs increased by 81 percent between 2009 and 2016.⁶³ Saylor suggests that this problem is likely to get worse; crash incompatibility means that SUVs are also dangerous to motorists driving smaller cars,⁶⁴ who in turn may buy SUVs to protect themselves, thus creating even more risk to nondrivers.⁶⁵

Most of Saylor's article is devoted to an explanation of why

⁶⁰See Bronin, *supra* note 8, at 2168 (mentioning regulation of "most key parts of new vehicles, including brake systems, tires, seat belts, and child safety seats" as well as "separate regulations on bumper standards for passenger cars").

⁶¹See also Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487, 494 (2022).

⁶²Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487, 494 (2022).

⁶³Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 495.

⁶⁴Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 495 (SUVs are 28 percent more likely than passenger cars to kill other passenger-car occupants in a collision, because the height of a light truck "results in misaligned crumple zones and greater force on the passenger compartment of the smaller car.").

⁶⁵Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 495 ("the shift is also self-

NHTSA has failed to do anything to solve the crash incompatibility problem. Over the years, NHTSA has been quite willing to engage in rulemaking: in the 1980s, the agency "promulgated and revised standards on a regular basis, often at Congressional insistence."⁶⁶ And since then, transportation bills passed by Congress have incorporated additional safety protections.⁶⁷ But no matter who was President, NHTSA has refused to enact regulations related to pedestrian safety.⁶⁸ For example, despite signing a 1998 UN agreement on global auto safety regulations, NHTSA has refused to even issue a rulemaking notice on standards that have been adopted by Japan and the European Union.⁶⁹ Similarly, NHTSA has consistently avoided rulemaking relevant to crash compatibility.⁷⁰

What went wrong? Saylor suggests that the problem is partially ideological: NHTSA, the White House and Congress all see auto safety as primarily an issue of consumer protection, and thus believe that safety regulation must benefit the consumer (that is, the buyer of a vehicle or the vehicle's occupants).⁷¹ For example, a 1972 statute required NHTSA to inform consumers on the crashworthiness of automobile models, but defined crashworthiness as "the protection that a passenger motor vehicle affords *its passengers*."⁷² In 1974, NHTSA enacted a rule inconveniencing consumers by mandating devices that prevented cars from starting until

reinforcing, as car drivers increasingly feel unsafe on roads dominated by light trucks.").

⁶⁶Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 503.

⁶⁷Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 503.

⁶⁸Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 504-08.

⁶⁹Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 503 at 507-08.

⁷⁰Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 503 at 509-11.

⁷¹Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 511.

⁷²Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 513 (emphasis in original) (citation omitted).

seatbelts had been fastened.⁷³ Congress repealed the rule, sending a message that consumers only needed to “purchase . . . as much safety equipment as they wanted.”⁷⁴ Since then, rules have been “occupant-centric and almost exclusively served the interest of automobile owners.”⁷⁵

In addition, it is not clear that NHTSA has the authority to address a dangerous class of vehicle. NHTSA’s authority comes from the 1966 Motor Vehicle Safety Act (MVSA),⁷⁶ which allows the agency to set safety requirements for automobiles as long as the standards are “reasonable, practicable, and appropriate for the specific type of vehicle.”⁷⁷ This language has been interpreted to mean that NHTSA may not eliminate any “specific type of vehicle,” no matter how dangerous it is.⁷⁸

NHTSA also has the authority to force recalls of defective vehicles.⁷⁹ However, NHTSA’s recall authority is not a viable remedy for the defects of light trucks, because the danger of light trucks “are by and large due to features inherent in the class-vehicles’ height and weight . . . and [thus] exists in all light trucks regardless of manufacturer.”⁸⁰

NHTSA also provides vehicle buyers with information on the safety of specific models through the New Car Assessment Program (NCAP), which rates vehicles based on

⁷³Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 513.

⁷⁴Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 513 (citation omitted).

⁷⁵Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 515.

⁷⁶Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 498 (citation omitted).

⁷⁷Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 498.

⁷⁸Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 515.

⁷⁹Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 499.

⁸⁰Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 500.

performance.⁸¹ But even if the NCAP gave all light trucks the worst possible rating, this rating would carry no legal force.⁸² Moreover, the harms caused by light trucks are harms not to the buyers of vehicles, but to strangers who might be injured to those vehicles.⁸³ Thus, truck buyers have no reason other than selflessness to pay attention to such ratings—and in fact, might rationally believe that they are *safer* buying light trucks in order to protect themselves from the crash compatibility problem.⁸⁴

Saylor's remedy is the rather high-flown idea of "transportation justice": the concept that inequality is bad, and that light trucks are bad because they "disproportionately subjects low-income and minority people to traffic violence."⁸⁵ However, this racially charged argument seems unlikely to be popular; if anything, the use of language about "minority people" is likely to persuade non-minority car-owners that they benefit from the status quo, and that they can only protect themselves by hoarding their privileges. Moreover, Saylor's logic implies that the only thing wrong with the status quo is that it disproportionately kills minority groups. Does that mean that if victims of light trucks were demographically similar to the average American, our rising death toll would not be worth stopping?

As a more practical matter, Saylor suggests that because the MVSA apparently does not authorize NHTSA to eliminate unsafe classes of vehicles, any implementation of "transportation justice" principles will come from Congress. He suggests that Congress "modify the MVSA so that consumer choice no longer trumps protection of vulnerable

⁸¹Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 500.

⁸²Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 500.

⁸³Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 500–01.

⁸⁴Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 501.

⁸⁵Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 517.

road users."⁸⁶ He does not discuss in detail exactly what this would mean; however, he mentions in a footnote that if Congress passed the appropriate general language, NHTSA would be at least willing to make a rule adopting the sort of global auto safety regulations enacted in Europe and Japan.⁸⁷

⁸⁶Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 521.

⁸⁷Saylor, *The Road to Transportation Justice: Reframing Auto Safety in the SUV Age*, 170 U. Pa. L. Rev. 487 at 521 n. 194. *See also supra* note 69 and accompanying text (NHTSA endorsed such regulations in 1998, but refused to implement them).

III. Conclusion

Bronin, Shill and Saylor all make one thing clear: federal bureaucrats have failed to protect road users from dangerous vehicles traveling at dangerous speeds, both by action and by inaction.

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Introduction

The passage of the National Highway Traffic Safety Act of 1966 (NHTSA) was a landmark event in the history of the federal government's involvement in the regulation of the automotive industry. The act was passed in response to a series of public inquiries and inquiries from Congress, which had been prompted by a number of high-profile accidents involving commercial vehicles. The act was a landmark event in the history of the federal government's involvement in the regulation of the automotive industry. The act was passed in response to a series of public inquiries and inquiries from Congress, which had been prompted by a number of high-profile accidents involving commercial vehicles. The act was a landmark event in the history of the federal government's involvement in the regulation of the automotive industry. The act was passed in response to a series of public inquiries and inquiries from Congress, which had been prompted by a number of high-profile accidents involving commercial vehicles.

Background

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