

Oklahoma City University Law Review

Summer, 2005

30 Okla. City U.L. Rev. 245

LENGTH: 12953 words

CONSTITUTIONAL LAW: The **Orphaned** Right: The **Right to Travel** by Automobile, 1890-1950

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SUMMARY:

... Driving an automobile is a privilege, not a right, according to the prevailing laws of every jurisdiction of the United States. ... "A traveler on foot [had] the same right to the use of any public highway [as the operator of] an automobile or any other vehicle. ... Chicago was one of the first large cities to require motor vehicle registration, and the Chicago Automobile Club voiced a strong protest against the requirement that numbered license plates be displayed, even though the city initially allowed motorists to select their own numbers and charged a fee of only \$ 3 Farson, however, never had the complete support of his club, and by 1904 he was representing only a small minority of the members. ... The State Legislature affirmatively provided that "any person owning or operating an automobile or motor vehicle ... [except for hire] shall not be required to obtain any license or permit pursuant to the provisions of any local or municipal resolution or ordinance. ... No court after 1920 found the **right to travel** sufficient to strike down a driver license requirement. ... Americans living during the turn of the twentieth century generally regarded highway travel as a fundamental right. ...

HIGHLIGHT: Abstract

Driving an automobile is a privilege, not a right, according to the prevailing laws of every jurisdiction of the United States. However, this was not always the case. When automobiles were first introduced around the turn of the twentieth century, drivers relied on common law traditions that protected the right of every person to travel upon public roadways without a license. Courts repeatedly wrote of an individual's "**right to travel**" by automobile and struck down regulations aimed at limiting the liberties of automobile drivers on constitutional grounds. With the passage of time, however, automobile regulators generally prevailed in legislative halls and courtrooms. Today, the public has accepted a degree of travel regulation which would have seemed almost tyrannical to nineteenth century Americans. This paper analyzes this change in common law and suggests that even if most Americans are unaware of it, the change represents a substantial loss of liberty.

TEXT:
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I. Introduction

Few historic events have brought as much change to the American landscape as the development of the automobile. ⁿ¹ Indeed, American history can easily be written in two parts: America before the arrival of [*246] automobiles and America after automobiles. Motorized vehicles altered everything from the demographic distribution of American society to the ways Americans live and work to the normative balance of home and family life. ⁿ²

Equally great are the changes the automobile brought to the American legal landscape. The automobile entered the scene during a unique period when America's culture of laissez-faire was being swept away by the instrumentalist lawmakers of the Progressive Era. ⁿ³ Law was seen as a weapon with which to wage war on social uncertainty, inequity, and insecurity. ⁿ⁴ The "hands-off" approach of earlier generations was seen as a barrier to sound public policy. ⁿ⁵ Highway safety, like food, drug, and workplace safety, was increasingly seen as the domain of government policymakers. ⁿ⁶

Nineteenth century Americans would scarcely recognize the immense quilt of laws which govern highway travel today. With the exception of the Civil War, nothing before or since has so fundamentally altered America's scheme of rights and freedoms as that of the laws now governing highway travel. Today, the vast majority of Americans voluntarily submit to a variety of registration, identification, and licensing schemes in order to travel by automobile. Today's laws once would have been viewed as unconstitutional. The hand of the State now extends over aspects of travel in ways which would have been impossible according to common law precedents familiar to earlier Americans.

Prior to the nineteenth century, courts generally held the public roadways were open to all users without regard to the travelers' methods or means of transport. Licenses or other indicia of governmental permission were thought unnecessary or even violative of constitutional rights. ⁿ⁷ But widespread disdain and fear of the automobile led twentieth century policymakers to push aside these long-standing constitutional barriers in order to regulate motorized driving. This new regulatory [*247] approach was justified on the grounds that motor vehicles were too dangerous to operate unlicensed and that traffic injuries were increasingly on the rise. ⁿ⁸

II. The Birth of Automobility

To understand how thoroughly the country's travel laws were reconstructed in the automobile's wake, one must consider the immense adjustments required for American roads to meet the demands of the motor age. Writing in the 1860s, Harvard's future president, Charles W. Eliot, declared the entire United States had "hardly twenty miles of good road, in the European sense." ⁿ⁹ America's system of road construction and maintenance was "semimedieval" for it was paid for and administered on a strictly local basis leaving those individuals whose property abutted roadways to perform the necessary maintenance. ⁿ¹⁰ The transformation of the American roadway, to accommodate the automobile, is itself an epic with many adventures, heroes, and villains, and with something of a happy ending (from the automobile's perspective). ⁿ¹¹

In 1903, when the first horseless carriage crossed the United States, there was not a single foot of paved highway absent that found in the cities. ⁿ¹² More than ninety-three percent of America's roads were just plain dirt. ⁿ¹³ In the summer, the roads were deep, silty dust, and in the winter, the roads were frozen ruts of mud. ⁿ¹⁴ Spring rains turned the roadways to muddy channels of soup and gumbo. ⁿ¹⁵ It was only a short distance out from every town where the roads became barely navigable. Many roads were without signposts, or they were posted so poorly that strangers to the area could take little comfort from the directions. ⁿ¹⁶ [*248] Farmers and ranchers, who were disdainful of automobile traffic, offered little assistance to lost motorists and placed obstacles - figuratively, politically, and literally - in the way of car drivers. ⁿ¹⁷ Some automobile haters spread tacks and shards of broken glass upon intersections and even altered landmarks to foil the travels of motor tourists. ⁿ¹⁸

Rural roads were a commons, if not a no-mans-land, unpatrolled by any government authority. ⁿ¹⁹ Local government's maintenance of road conditions was scant, and obstructions lasted days or even weeks before travelers removed them. ⁿ²⁰ It has been noted that public snow removal was unheard of anywhere around Chicago or its suburbs until the winter of 1924-1925. ⁿ²¹ The earliest motorists were true pioneers who drove as much for adventure as for any utilitarian purpose. Necessity dictated that motorists dabble in mechanics, metalworking, rubber and glass repair, and other arts. ⁿ²² Automobile tourists carried extensive tools and survival kits, including tow ropes, pumps, tire-patching equipment, winches, compasses, tire chains, and hatchets. ⁿ²³ Even short trips required tents, sleeping bags, and other survival gear in case of foul weather, unpredicted breakdowns, or impassable roads. ⁿ²⁴ The first automobilists to cross the continent carried an armory of pistols, a shotgun, and a rifle to ward off "road agents." ⁿ²⁵ Resourceful drivers learned to substitute any suitable fuel when gasoline proved scarce; Benzine was used on one stretch of the first transcontinental journey. ⁿ²⁶

III. The Right to Travel

During the Gilded Age, while travel over America's patchwork system of roads was often difficult due to road conditions, it was relatively free from regulations. ⁿ²⁷ American roads of the period were routes not only for horses and carriages, but for bicycles, mule or oxen [*249] teams, and large amounts of pedestrian traffic. "A public highway ... [was] open in all its length and breadth to the reasonable, common, and equal use of the people, on foot or in vehicles." ⁿ²⁸ "A traveler on foot [had] the same right to the use of any public highway [as the operator of] an automobile or any other vehicle." ⁿ²⁹ The very term "highway" meant a "public way open and free to anyone who had occasion to pass along it on foot" or by vehicle, and many courts, up until quite recent decades, so stated. ⁿ³⁰

The rule of open travel on the roads was viewed as superior to freedom of speech, freedom of religion, and freedom of press throughout the late 1800s. ⁿ³¹ Eighteenth and nineteenth century judges upheld the practices of slavery, wife-beating, flogging, and child-beatings in the public schools, but strictly prohibited the infringement of the **right to travel**. ⁿ³² In fact, the **right to travel** without undue restriction was the very first right recognized as a fundamental liberty under the Fourteenth Amendment to the U.S. Constitution. ⁿ³³

The **right to travel** meant travel by virtually any means available, or at least any ordinary or usual means. ⁿ³⁴ Carriages, horses, and every type of cart that could be

pushed, pulled, or dragged across the landscape by the muscle of human or animal qualified. ⁿ³⁵ When bicycles came into widespread use in the 1880s, courts often struck down regional ordinances aimed at curbing the use of the machines. ⁿ³⁶ There seemed to be no good reason to treat the first pioneers of travel by horseless carriages any differently. ⁿ³⁷ In 1907, the Supreme Court of Iowa, like many state courts, opted to place automobile travel within the same [*250] category as travel by horse, carriages, and other vehicles. ⁿ³⁸ "The right to make use of an automobile as a vehicle of travel," wrote Justice Ladd, "is no longer an open question." ⁿ³⁹ "The owners thereof have the same rights in the roads and streets as the drivers of horses or those riding a bicycle or traveling by some other vehicle." ⁿ⁴⁰ "There can be no question of the right of automobile owners to occupy and use the public streets of cities, or highways in the rural districts," stated the Minnesota Supreme Court in 1910, "[yet] they have no exclusive right." ⁿ⁴¹

An exhaustive search of cases, statutes, and history regarding early traffic regulations has yielded no evidence of any wagon or carriage licenses, outside the business context, anywhere in the United States during the first 150 years of America's constitutional existence. ⁿ⁴² Travel and traffic accidents were regulated by common law tort principles rather than armed patrols. ⁿ⁴³ Not a single license law excluded any nonmerchant from traveling on the roads with wagons, horses, or buggies of any kind. Indeed, courts suggested that no such requirement could be upheld even if it were to exist. ⁿ⁴⁴

One early case clearly enunciating the **right to travel** by the vehicle of one's choice (including by automobile) was *Swift v. City of Topeka*, ⁿ⁴⁵ an 1890 Kansas Supreme Court decision. *Swift* involved a bicyclist who was arrested and fined one dollar for pedaling across a Topeka bridge in violation of a city ordinance. ⁿ⁴⁶ The ordinance forbade any person "to ride on any bicycle or velocipede upon any sidewalk in the city of Topeka or across the Kansas river bridge." ⁿ⁴⁷ The ordinance represented bold-faced discrimination against bicyclists, because horse-driven vehicles and wagons were allowed to cross the bridge without legal [*251] impediment. W.E. Swift argued he had a right to cross the bridge using the vehicle of his choice without governmental interference. ⁿ⁴⁸ The Kansas Supreme Court struck down the Topeka ordinance and reversed Swift's conviction, declaring that

[each] citizen has the absolute right to choose for himself the mode of conveyance he desires, whether it be by wagon or carriage, by horse, motor or electric car, or by bicycle, or astride of a horse, subject to the sole condition that he will observe all those requirements that are known as the "law of the road." ⁿ⁴⁹

This right to drive was "so well established and so universally recognized in this country," wrote the court, "that it has become a part of the alphabet of fundamental rights of the citizen." ⁿ⁵⁰

When the City of Chicago enacted an ordinance requiring car drivers to be examined and licensed by a board of examiners, the Illinois Court of Appeals struck down the ordinance as unconstitutional. ⁿ⁵¹ The right of a car driver "to use the streets is undoubted," wrote the court, "subject to [the limitation that he honor the rights of other users,] his right cannot be regulated by an ordinance." ⁿ⁵² "The fact that an automobile is a comparatively new vehicle is beside the question. The use of the streets must be extended to meet the modern means of locomotion." ⁿ⁵³

The law of free travel was so well-settled that it was recognized in the "constitutional law" entry of American Jurisprudence as recently as 1931:

Personal liberty largely consists of the right of locomotion - to go where and when one pleases - only so far restrained as the rights of others may make it necessary for the welfare of all other citizens. The right of a citizen to travel upon the public highways and to transport his property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere privilege which [*252] may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness. Under this constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's rights, he will be protected, not only in his person, but in his safe conduct. ⁿ⁵⁴

Courts that spoke of the **right to travel** by automobile as "part of the alphabet of fundamental rights of the citizen" ⁿ⁵⁵ were invoking the highest legal protection available under the U.S. Constitution. Although it has never been completely clear when a particular right becomes recognized as a prohibitive obstacle to government action, a small number of the most important individual rights - so-called fundamental rights - have been treated with the utmost sanctity. ⁿ⁵⁶ Among these rights are freedom of speech, the right to privacy in contraceptive matters, and the right to marry. ⁿ⁵⁷ These rights are considered outside the arena of legislative decision-making except where preempted by a compelling governmental necessity. ⁿ⁵⁸ The **right to travel** by the vehicle of one's choice was thought to be as important as any personal freedom recognized under the Constitution. ⁿ⁵⁹

Even the U.S. Supreme Court suggested, if only in dicta, that driving a motor car without undue government interference was a constitutional right. ⁿ⁶⁰ United States Supreme Court Justice Louis Brandeis wrote in *Buck v. Kuykendall* that "the **right to travel** interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. A citizen may have, under the Fourteenth Amendment, the **right to travel** and transport his property upon them by auto vehicle." ⁿ⁶¹

[*253] Lack of regulatory impositions did not mean an absence of legal constraints. Tort law, rather than criminal law, dictated the duties and limitations of auto users. Both car drivers and other travelers were "required to use such reasonable care, circumspection, prudence, and discretion as the circumstances required." ⁿ⁶² The use of warning signals, bells, or horns was in some respects required by understood practice as early as 1907. ⁿ⁶³ Juries in civil cases, rather than lawmakers, were the final arbiters in determining what driving was reasonable; tort rules and customary practices governed speed, lane position, passing and meetings between cars, horses, and horse teams. ⁿ⁶⁴ "The more dangerous the character of the vehicle or machine, and the greater its liability to do injury to others, the greater the degree of care and caution required in its use and operation," wrote Justice Pennewill of the Superior Court of Delaware. ⁿ⁶⁵

As quickly as early lawmakers sought to regulate auto use, courts were ready to strike down such regulations on constitutional grounds. ⁿ⁶⁶ Chicago's South Park Board

passed an ordinance banning automobiles from the city's South Side boulevards in June of 1899, and this ordinance was immediately challenged by Chicago's auto owners. ⁿ⁶⁷ The New York Times ("Times") pronounced the ban on automobiles to be virtually a dead letter a week later, after the first attempted prosecution was defeated in court. ⁿ⁶⁸

That same year a New York City ordinance banning horseless carriages from Central Park roads was challenged by a representative of the New York Automobile Club. ⁿ⁶⁹ The Central Park's administrators [*254] alleged automobiles might frighten horses and otherwise pose an annoyance. ⁿ⁷⁰ The Times admonished that "the theory that horses have some rights which automobiles are bound to respect ... is a position impossible to maintain for any length of time." ⁿ⁷¹ In a series of editorials, the Times predicted that "in the very near future everybody except the writers and students of history will have forgotten that efforts were ever made to exclude self-propelled vehicles from any public highway." ⁿ⁷² The Times went on to state, "it is difficult to imagine an application more devoid of merit than that which has been made to the Park Commission to exclude automobiles from the public parks." ⁿ⁷³

True to the law of the road, automobilists rejoiced when the Automobile Club won a quick and easy victory over the ordinance in the Yorkville Police Court. ⁿ⁷⁴ A city magistrate held that "as pleasure carriages are allowed on the park roads and as automobiles are undoubtedly carriages of that description, the arrest of" a club member for driving in Central Park was illegal. ⁿ⁷⁵

Some early automobilists were relentless in insisting upon their liberties. In May of 1901, members of the Automobile Club of America in New York led by Albert Bostwick and J. C. Church, drove through Central Park at twice the posted speed limits taunting police to arrest them, but they were never arrested. ⁿ⁷⁶ The group aimed to strike down Central Park's speed ordinances as unfair to automobile drivers, because they made autos travel slower than horses. ⁿ⁷⁷ Authorities refused to give the Auto Club its test case, however, stating that the purpose of the ordinance was to protect horses, and no horses had been bothered by the speeding cars. ⁿ⁷⁸

The Chicago Auto Club also challenged auto regulations for a brief period in the first decade of the twentieth century. John Farson, president of the Chicago Auto Club, led a lengthy but ultimately unsuccessful attack on Chicago's first registration ordinance passed in 1903. ⁿ⁷⁹ About eighty members of the Club waged the attack on the law, [*255] and many were arrested for driving without registration before a final decision was handed down by a Chicago court against Farson in 1905. ⁿ⁸⁰ The challenge gradually ran out of steam as arrests mounted and litigation slowly proceeded through the courts over a period of months and years:

Chicago was one of the first large cities to require motor vehicle registration, and the Chicago Automobile Club voiced a strong protest against the requirement that numbered license plates be displayed, even though the city initially allowed motorists to select their own numbers and charged a fee of only \$ 3 Farson, however, never had the complete support of his club, and by 1904 he was representing only a small minority of the members. Some of the affidavits taken in support of the city's case were procured from prominent Chicago club members who thought the city ought to regulate the motor vehicle. Then, during Farson's absence from a meeting on October 17, 1907, the Chicago Automobile Club voted unanimously to abandon its fight and

comply with the city numbering ordinance. Some 200 members registered their cars the following day, and several even offered to allow the police to use their cars to help apprehend speeders and violators of the city's numbering ordinance. ⁿ⁸¹

The automobile clubs were a formidable force in the early years of the American automobile, but their vast diversity of members and activities kept them from putting up unified barriers to auto regulation. ⁿ⁸² The clubs occasionally performed inconsistent roles; for instance, while lobbying for greater state funding of road maintenance the auto clubs would complain about state regulation on the roads. ⁿ⁸³ Some automobile clubs were dominated by auto dealers while others were the exclusive domain of the upper classes. ⁿ⁸⁴ Some clubs paid to build or maintain [*256] roadways while some mostly sought sanctions and venues for auto racing. ⁿ⁸⁵ Some clubs launched towing services, efforts to detect traffic in stolen vehicles, and insurance plans for their members. ⁿ⁸⁶ The Automobile Club of Pittsburgh offered legal advice on thousands of occasions, filed court challenges against regional traffic regulations, and even sued the Borough of East McKeesport for "unnecessary arrests." ⁿ⁸⁷ Most clubs simply fought for good roads, maps, and signs while placing less emphasis on constitutional challenges. By 1910, many regional auto clubs had merged with the American Automobile Association ("AAA"), which became the principle spokesman for the American motorist. ⁿ⁸⁸ Court challenges of auto regulation based on constitutional assertions became increasingly rare.

The realities of the age seemed to constantly test the mettle of those who invoked the historic **right to travel**. For lawmakers of the twentieth century, the automobile and its potential for trouble seemed to cry out for regulation. Wherever automobiles came into use, accidents and mayhem seemed to follow in their wake. Legend holds that when the State of Missouri first harbored four automobiles, two of them managed to collide on a St. Louis street with such impact as to injure both drivers. ⁿ⁸⁹ Former United States Representative, Robert G. Cousins of Iowa, said in a speech published in the Congressional Record in 1910, that the increasing omnipresence of automobile drivers made the freedom to travel on public highways illusory for most other types of travelers. ⁿ⁹⁰

Hitherto the streets and highways have been constructed by and for the use, convenience, and safety of all the people, not exclusively for any one class.

Suddenly, within less than half a dozen years, a mighty change has taken place. While the people - all the people - continue to supply the toil and tax for their maintenance, the streets and highways are to-day [*257] practically monopolized by a single class, and that class - owners and operators of automobiles - comprises but a small percentage of the population. Horse vehicles, the only kind that can generally be afforded by the average citizen, are practically banished from the boulevards and well-paved streets, and are frightened from the main highways throughout the country. The lives of pedestrians are menaced every minute of the days and nights by a wanton recklessness of speed, crippling and killing people at a rate that is appalling. ⁿ⁹¹

Robert Cousins was an influential Republican in Congress from 1893 until 1909 during the period when the automobile arrived and began its rapid takeover of American transportation. ⁿ⁹² Born and raised on a farm near Tipton, Iowa, Cousins was an eyewitness to the incredible transformation of mobility and culture. ⁿ⁹³ His home state

of Iowa, along with neighboring Nebraska, had the highest per-capita ownership of automobiles in the nation by the time his congressional service ended. ⁿ⁹⁴ Cousins was the keynote speaker at the 1904 Republican National Convention and one of the nation's most respected orators. ⁿ⁹⁵ His public stance against the dangers of automobile operation must have resonated through legislative chambers with raw appeal. "The operation of automobiles on the streets," said Cousins, "is practically the same as though so many railway locomotives were turned loose on the thoroughfares, except that in the operation of locomotives the engineer must be an experienced driver [and] must know the construction of his engine." ⁿ⁹⁶

The ninety and nine of every hundred people of this and other countries will not abandon the public thoroughfares to a single class comprising less than 1 per cent of all the population. If a selfish, reckless, and indulgent class must run faster than the majority of [*258] mankind, let them build their speedways and kill each other if they will, but they must not be permitted to continue to terrorize and kill the people whose toil and tax maintain the public thoroughfares. ⁿ⁹⁷

Representative Cousins stated that fines and arrests did little to deter speeders, who simply paid the fines and continued speeding. ⁿ⁹⁸ "Horrible and gruesome incidents are of almost daily occurrence," and the recklessness of automobilists "has bespattered boulevards with blood." ⁿ⁹⁹ Representative Cousins went on to state,

it should be said in justice to many automobilists, that after running over people they have stopped and rendered quick assistance and have furnished flowers for the funerals of their victims, although in a great many instances it appears that the greatest utility which high-speed gearing accomplishes is getting away from the corpse before the machine numbers can be detected. ⁿ¹⁰⁰

"Why should this daily tribute of human life be paid to the rollicking, wanton greed of a few - an infinitesimal number of our population?" asked the former congressman. ⁿ¹⁰¹ "Why should the streets and highways of the world be spattered with the blood of men and women who provide the labor and the money to construct and maintain the public thoroughfares?" ⁿ¹⁰²

Cousins may have said most eloquently what growing numbers of Americans were thinking in the first decades of the twentieth century. As the Farson case, described above, illustrates, even some auto club members were inclined to trade in their rights for assurances of safety and driving predictability. Farson's four year struggle to invalidate Chicago's registration ordinance won him few supporters and even fewer victories. The argument that driving unregistered was a constitutional right, although successful in some localities in the earliest years, became a losing argument everywhere from 1905 onward. Such regulation [*259] simply seemed reasonable to the vast majority of the population. As Flink writes, "patterns of protest to local registration laws [were] invariably based on grounds that now seem absurd." ⁿ¹⁰³

IV. The Beginning of The Driver's License

The idea that American citizens should need permission to travel upon the public roads by motorized vehicles probably did not come to the minds of many people in the

first years of automobile travel. Instead, the automobiles themselves seemed to be the initial target of would-be regulators. The first appearances of steam-driven auto carriages in the 1800s prompted several municipalities to ban such noisy monstrosities outright. ⁿ¹⁰⁴ Early American automobile laws followed the pattern of targeting the vehicles themselves for regulation first while looking to their operators last. In almost every state, auto registration laws were enacted several years before auto driver license laws. As early as 1901, New York became the first state to require motor vehicles be affixed with registration numbers, ⁿ¹⁰⁵ yet the state did not require registration of operators until several years later. The Rhode Island General Assembly enacted an auto registration law in 1904, but rejected language in the same bill that would have required drivers to be licensed to drive. ⁿ¹⁰⁶ The text of New York's first automobile laws indicates that licensing was considered and rejected by the drafters. The State Legislature affirmatively provided that "any person owning or operating an automobile or motor vehicle ... [except for hire] shall not be required to obtain any license or permit pursuant to the provisions of any local or municipal resolution or ordinance." ⁿ¹⁰⁷

Consideration of driver licensing was revived at a meeting of the Board of Governors of the Automobile Club of America in New York City on June 3, 1902, after the tragic deaths of two spectators at the Baker Torpedo speed trials in Staten Island. ⁿ¹⁰⁸ Ward Chamberlin, an officer of the Automobile Club, indicated at the meeting that no [*260] professional auto "chauffeur" was licensed anywhere in the United States, and licenses were unnecessary because every driver had a duty, presumably under common tort and contract law, to be competent in the use and knowledge of motor vehicles. Chamberlin went on to ask, "why not ask the same question in regard to drivers of butchers' carts?" ⁿ¹⁰⁹ "Runaway [horse] accidents occur every day, and yet there is no public clamor about them." ⁿ¹¹⁰

This discussion, reprinted in the June 3, 1902, issue of the New York Times, represents one of the first known public discussions of the concept of licensing the drivers of American automobiles. Although strenuous resistance to the idea of licenses was voiced at the meeting, the Automobile Club apparently resigned itself to the possibility of future licensing as a matter of fate. ⁿ¹¹¹

I should not, said [Automobile Club] President Shattuck, object to a proper licensing scheme. There is none at present here or in England. In France you apply to the Chief of Police. In Paris he refers you to one of the engineers of the city for examination. You go to him, by appointment, with your motor. He gets in beside you, and you drive as he directs, slow or fast. He asks you a few questions, and all is over in six or seven minutes. The examination is by no means severe. You get first a provisional license, and then a full license. If you are caught in delinquency, fast driving or what not, the officer takes your number and you may expect a summons. If you are caught frequently you may wind up in a cell for a day or so. ⁿ¹¹²

Regulating motorized vehicle travel took off quickly after 1905. The Providence Journal reported that "the people of Rhode Island are incensed by flagrant cases of reckless driving of automobiles, [and] the same feeling seems to be prevalent all over the country." ⁿ¹¹³ As deaths and wreckage mounted, fewer and fewer Americans maintained the hard-line [*261] libertarian position with regard to travel. American culture itself was changing, and the frontier sentiments that so typified the nineteenth century were fading into memory. ⁿ¹¹⁴

Legislative proposals often varied drastically from state to state, and automobile aficionados faced a constantly shifting patchwork of state and regional proposals. As quickly as courts struck them down, lawmakers made more. The automobile associations gave up trying to challenge every state regulatory scheme and instead devoted more and more time to navigating through the complexities of interstate regulatory differences.

V. The Good Roads Movement

It was the want of good roads that seemed to have sealed the fate of the highway libertarians. Chief among the problems faced by car drivers was the lack of adequate roads for travel. The cry for good roads became a powerful political issue beginning in the 1890s.ⁿ¹¹⁵ Colonel Albert Pope, a multi-millionaire bicycle manufacturer turned automaker, and head of the League of American Wheelmen, led a national movement to raise road building funds.ⁿ¹¹⁶ Pope's Good Roads Movement became a rallying cry for the auto associations around the country.ⁿ¹¹⁷ Leaders in the movement sought private donations for road building, but also lobbied for bills and resolutions that provided state and federal aid to counties and municipalities for highway construction.ⁿ¹¹⁸ With greater government involvement in road building came greater government regulation.

Rights of access to roadways changed greatly as the car came to monopolize the roads.ⁿ¹¹⁹ In earlier years, owners of land next to [*262] roadways won countless court battles to obtain access to those roadways. But when horseless carriages came into popular use, the law of streets and roads quickly evolved to give municipalities absolute rights to construct or eliminate sidewalks, parking zones, parking meters, and curbing without much regard for the interests of abutting property owners. The complex realities of twentieth century urban life required the broad proclamations of freedom known to prior generations to give way to a pragmatic municipal supremacy. Touching on this point, in the 1943 case of *Gardner v. City of Brunswick*, the Georgia Supreme Court stated, "while the public has an absolute right to the use of the streets for their primary purpose, which is for travel, the use of the streets for the purpose of parking automobiles is a privilege, and not a right."ⁿ¹²⁰

As the roads became the province of state and federal legislatures, the very nature of highway travel changed. No longer were the highways the domain of common travelers with carts, buggies, horses, and the occasional automobile. The new highways were intended for automobiles primarily, with the occasional pedestrian and horse-wagon.

A shape-shifting jurisprudence developed to give more deference to legislative efforts to regulate drivers. In 1916, the U.S. Supreme Court adopted a hands-off, or states' rights approach, upholding the power of each state to regulate the use of motor vehicles on its own highways.ⁿ¹²¹ This was done despite the prevailing view among jurists only a decade earlier that driving without unnecessary regulation was a fundamental right under the U.S. Constitution.ⁿ¹²² Whether by pure negligence, poor memory, or willful neglect, the judges that ascended to the bench after the 1920s failed to consistently apply, and sometimes even to mention, the **right to travel** by the vehicle of choice.

The licensing of drivers was achieved, like many other areas of wide-scale regulation, incrementally. States first required licenses of drivers "for hire" and then gradually expanded, usually over a period of years, to require licenses for all drivers in general.

The Kentucky Court of Appeals, for example, declared in 1929 that "a citizen may have, under the Federal constitution, a **right to travel** and to transport his [*263] property upon the highways by motor vehicle; but he has no right to make the highways his place of business." ⁿ¹²³

The for-hire/not-for-hire dichotomy of early driver licensing was in some ways required by the constitutional jurisprudence that existed before the auto era. The precedent of distinguishing vehicles and drivers by their nature as either commercial or noncommercial preceded the automobile, and was based upon the theory that "public" travel could be regulated even if private travel could not. ⁿ¹²⁴ Vehicles for hire had been subject to license laws as early as the nineteenth century and almost certainly long before.

By 1910, with the advent of the automobile, governments in the most populous states had expanded the definition of "for hire" vehicles to include all vehicles of a commercial nature and all vehicles carrying loads of any kind. ⁿ¹²⁵ Cars that were rented for temporary private use became "public" and hence subject to regulation. ⁿ¹²⁶ An exception to the **right to travel** began to pop up whenever the constitutionality of a license law was at issue. It was not long before the barriers to general licensing became all but an illusion.

Many state courts declared driving an automobile a protected right, but nonetheless, found driver licenses passed constitutional muster. No court after 1920 found the **right to travel** sufficient to strike down a driver license requirement. Barely a decade into the twentieth century, American automobile drivers had largely given up the battle for the right to drive without a license. One reason may have been class envy, or rather, class ego. Legal historian Lawrence Friedman pointed out that the automobile was initially a toy for the rich, and, early on, evoked envy and pride. ⁿ¹²⁷ The driver's license was a status symbol every member of high society desired. Only four years earlier, in 1904, the first Rhode Islanders required to register their automobiles leaped at the opportunity to obtain the first set of plates. ⁿ¹²⁸ One car owner phoned the Secretary of State at 1:00 a.m. following the day the law passed to request registration number one, only to find the number had already been promised to one of the law's sponsors in the General Assembly. ⁿ¹²⁹ Under such [*264] circumstances, a challenge that registration requirements and driver licenses were an affront to fundamental constitutional rights was rare indeed.

In the end, the institution of the driver's license prevailed because those most inclined to oppose the institution were continually occupied with objecting to differing state regulations. The earliest registration and license regulations varied so much from state to state few drivers knew exactly what the law was outside their own locality. ⁿ¹³⁰ Shortly after New York and Massachusetts began requiring driver licenses, the AAA led a small crusade not for invalidation of the license laws, but for uniformity of the laws. ⁿ¹³¹

In 1907, the chairman of the AAA wrote, it is regretted, that automobile legislation is even yet of so diverse and divergent a nature throughout the several states as to indicate an imperative demand for one of two things, to wit: either (a) the speedy enactment of a Federal law covering the field as far as may be; or (b) the enactment throughout the States of a uniform automobile State law framed upon the model of the best of the present State laws, with improvements thereon if possible." ⁿ¹³²

A bill to issue federal driver licenses for interstate travel was introduced in Congress in 1911. ⁿ¹³³ The bill never got out of committee, however, and little information is known of the debates over the bill during its committee consideration. Federal licensing of drivers passed from the minds of lawmakers shortly afterward, and no concerted effort at such a scheme arose after the early twentieth century. ⁿ¹³⁴

[*265] The war for the right to drive was not over, however. In the West, legislatures were slower to adopt the driver's license, and litigation over the issue continued throughout the 1920s and 1930s. Texans had been driving cars on Texas roads for fifty years when the Texas legislature passed its Driver's License Act in 1935. In that year, the Texas Senate passed the American Bar Association's model "Uniform Motor Vehicle Operators' and Chauffeurs' License Act." ⁿ¹³⁵ The Texas House of Representatives, however, authored its own legislation making the driver's license voluntary:

Every person in this state desiring to operate an automobile under the provisions of this law shall, upon application and identification, be issued an operator's license to drive by the county clerk of the county in which the motor vehicle is registered. But every person in the State over the age of fourteen years ... shall have the right to drive and/or operate a motor vehicle as that term is now defined by law, upon the public highways and roads of this state. ⁿ¹³⁶

The House's version of the proposed license law cited a Texan's "right to drive" nine more times. ⁿ¹³⁷ But when the House and Senate versions were reconciled, the language making the license voluntary was removed. ⁿ¹³⁸ However, the House leadership insisted on inserting into the final act a provision for appeal which allowed any person denied a license to petition for determination of "whether the petitioner is entitled to the right to drive a motor vehicle on the highways of his state." ⁿ¹³⁹

As recently as 1943, the Mississippi Supreme Court proclaimed the **right to travel** by automobile to be a fundamental right. ⁿ¹⁴⁰ "There seems to be no dissent among the authorities on this proposition," the court wrote, apparently oblivious to the swiftness with which this fundamental liberty had already been lost in most other jurisdictions. ⁿ¹⁴¹ The [*266] Mississippi Supreme Court's words were mostly dicta, however, and the court's position was overturned within two decades and strongly renounced a generation later. ⁿ¹⁴²

Month after month, year after year, the regulators made inroads upon the domain of traffic freedom. Although the right to drive was mentioned in dicta in countless decisions in the first two decades of the 1900s, it rarely operated as the rule of a case. Rarely were license schemes or other impositions struck down as violations of the Constitution. Driving may have been a fundamental right, but no court after the 1920s seemed willing to strike down legislation aimed at its restriction.

The 1925 edition of the Corpus Juris provides a telling illustration of how limited the right to drive had become by that time. Under the "Licenses" entry, it is stated,

as a general rule, the right of a person to drive a team or vehicle upon a public street or highway, or to haul by ordinary means, his own goods thereon without let or hindrance is common to all citizens who have occasion to use the street or highway for pleasure, profit, or advantage. ⁿ¹⁴³

But the very next entry, citing dozens of reported court decisions, indicated that "a license and tax may be imposed either by statute, or by municipal ordinance." ⁿ¹⁴⁴ Thus, the alleged "general rule" was so narrowly construed as to be, for practical purposes, illusory. (The most recent edition of Corpus Juris Secundum has eliminated all mention of the "general rule.") ⁿ¹⁴⁵

So it was that American law enveloped the right to drive into an increasingly narrow corner. Although constantly mentioned in the first era of traffic regulation, the **right to travel** by the vehicle of one's choice has slowly faded into distant memory and has been lost to history. Some courts recognized its demise as early as the first part of the twentieth century. The Supreme Court of South Dakota, for example, boldly [*267] proclaimed that "public highways [were] wholly under the control and supervision of the Legislature" as early as 1914. ⁿ¹⁴⁶ "The Legislature, could," the court went on, "exclude motor vehicles from the use of the public highways altogether." ⁿ¹⁴⁷ By the second half of the twentieth century, the **right to travel** by automobile was all but forgotten in the quest to control the automobile.

Since 1950, no court has described driving an automobile as a "right." The constitutional **right to travel** became increasingly interpreted not as a right to locomotion by the means of one's choice, but as a mere right to emigrate between states. ⁿ¹⁴⁸ As Gregory B. Hartch pointed out in a recent law review article, this narrow interpretation of the **right to travel** came about more from judicial neglect than from any clear doctrinal justification. ⁿ¹⁴⁹ Today, traffic bureaus refer to driving a motor vehicle only as a privilege. ⁿ¹⁵⁰ In 1994, the California legislature passed the Safe Streets Act of 1994, stating expressly that "driving a motor vehicle on the public streets and highways is a privilege, not a right." ⁿ¹⁵¹ The Fourth Appellate Court of California, in *Buhl v. Hannigan*, ⁿ¹⁵² echoed this view by writing, "there is no fundamental right to operate a motor vehicle; rather, driving is a privilege." ⁿ¹⁵³ The North Dakota Supreme Court was even more explicit, when it stated in *State v. Kouba*, "the use of the public highways is ... a privilege which a person enjoys subject to the control of the State." ⁿ¹⁵⁴

By the second half of the twentieth century, a vast net of governmental regulation had descended upon the American roadway. "The police car, prowling up and down the streets, or roaring down the highway with sirens blasting and lights flashing, [became] a familiar part of the landscape." ⁿ¹⁵⁵ In California, more than a half million tickets and fines and almost 9,000 jail sentences were handed out for motor vehicle [*268] infractions in the first half of 1950 alone. ⁿ¹⁵⁶ North Carolina prosecuted over one million crimes and infractions related to motor vehicle travel during a twelve month period between 1989 and 1990. ⁿ¹⁵⁷ In Michigan, each year about twice as many traffic misdemeanors are filed as all other nontraffic crimes combined. ⁿ¹⁵⁸

VI. Conclusion

Today, when Americans get behind the wheel of their automobiles, they are participating in one of the most regulated areas of modern life. Most people accept this regulation without reservation, and few realize the immense changes that have taken place over the last century. Americans living during the turn of the twentieth

century generally regarded highway travel as a fundamental right. Government impositions such as licenses or registration requirements were thought to violate constitutional protections, and horse and wagon travel were almost completely unregulated in the United States. As Americans took to automobile driving in large numbers, however, policymakers imposed increasingly stringent rules upon their conduct. Courts discredited earlier precedents which protected the **right to travel** and upheld the constitutionality of even the boldest traffic regulations.

The degree of traffic regulation is discounted as trivial by some Americans, but it has important implications on the level of freedom in the United States. Americans are largely dependent on motorized travel today because a substantial amount of all land travel is by car. ⁿ¹⁵⁹ Most Americans do not have access "to any viable alternative public mode of transportation." ⁿ¹⁶⁰ They must rely on automobile travel as their primary means of getting to work and for many of their basic practical, social, and recreational needs. ⁿ¹⁶¹ Today, people are more likely to come into contact with law enforcement officers as a result of road traffic than in any other circumstance. ⁿ¹⁶² Thus, the impositions of driver licensing and [*269] traffic patrol by agents of the State have generated a very real increase in the State's control over Americans' lives.

Legal Topics:

For related research and practice materials, see the following legal topics:
TortsTransportation TortsMotor VehiclesPersonal VehiclesTransportation LawPrivate VehiclesBicyclesTransportation LawRight to Travel

FOOTNOTES:

ⁿ¹. See Eric Foner, *The Story of American Freedom* 265 (1998).

ⁿ². See Lawrence M. Friedman, *American Law in the 20th Century* 548-51 (2002).

ⁿ³. See Bernard Schwartz, *Main Currents in American Legal Thought* (1993); Lawrence M. Friedman, *Crime and Punishment in American History* (1993).

ⁿ⁴. See Schwartz, *supra* note 3; Friedman, *supra* note 3.

ⁿ⁵. Cf. Schwartz, *supra* note 3; Friedman, *supra* note 3.

ⁿ⁶. Schwartz, *supra* note 3; Friedman, *supra* note 3.

ⁿ⁷. The **right to travel** by personal vehicle was thought to be a fundamental right. See, e.g., *City of Chicago v. Banker*, 112 Ill. App. 94 (1904); *City of Chicago v. Collins*, 51 N.E. 907 (Ill. 1898); *Swift v. City of Topeka*, 23 P. 1075 (Kan. 1890).

ⁿ⁸. See *infra* notes 70-79 & accompanying text.

ⁿ⁹. J.C. Furnas, *The Americans: A Social History of the United States 1587-1914*, at 674 (1969) (citing Sarah Cleghorn, *Portraits and Protests* 49 (1917)).

ⁿ¹⁰. See *id.*

ⁿ¹¹. See Stephen B. Goddard, *Getting There: The Epic Struggle Between Road and Rail in the American Century* (1994); Clay McShane, *Down the Asphalt Path: The*

Automobile and the American City (Kenneth T. Jackson ed., 1994).

n12. Stephen W. Sears, *Ocean to Ocean in an Automobile Car*, *American Heritage*, June/July 1980, at 59, 59.

n13. *Id.*

n14. *Id.*; Norman T. Moline, *Mobility and the Small Town, 1900-1930*, at 59 (1971).

n15. Sears, *supra* note 12, at 59.

n16. See Gerald Carson, *Goggles & Side Curtains*, *American Heritage*, April 1967, at 36.

n17. *Id.*

n18. See Furnas, *supra* note 9, at 109-10; Moline, *supra* note 14, at 59.

n19. See Furnas, *supra* note 9, at 109-10; Moline, *supra* note 14, at 59.

n20. See Furnas, *supra* note 9, at 109-10; Moline, *supra* note 14, at 59.

n21. See Moline, *supra* note 14, at 59.

n22. See Carson, *supra* note 16; Furnas, *supra* note 9; Moline, *supra* note 14.

n23. See Carson, *supra* note 16, at 36.

n24. *Id.*

n25. See Sears, *supra* note 12, at 60.

n26. *Id.* at 61.

n27. See Friedman, *supra* note 2, at 548-53; Schwartz, *supra* note 3.

n28. *Simeone v. Lindsay*, 65 A. 778, 779 (Del. Super. Ct. 1907).

n29. *Id.*

n30. See, e.g., *Holland v. Shackelford*, 137 S.E.2d 298-304 (Ga. 1964) (quoting *Atlantic W.P.R. Co. v. Atlanta, B. & A. R. Co.*, 54 S.E. 736, 746 (Ga. 1906)); *Stavola v. Palmer*, 73 A.2d 831, 838 (Conn. 1950) (quoting *Laufer v. Bridgeport Traction Co.*, 37 A. 379, 381 (Conn. 1897)).

n31. See David M. Rabban, *Free Speech in Its Forgotten Years* (Arthur McEvoy & Christopher Tomlins eds., 1997).

n32. See Richard C. Cortner, *The Iron Horse and the Constitution: The Railroads and the Transformation of the Fourteenth Amendment* (1993).

n33. See *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35 (1867).

n34. See *City of Chicago v. Banker*, 112 Ill. App. 94 (1904) (citing *City of Chicago v. Collins*, 51 N.E. 907, 909 (Ill. 1898)).

n35. Id.

n36. See McShane, *supra* note 11, at 116-17.

n37. See, e.g., *Banker*, 112 Ill. App. at 94; *Collins*, 51 N.E. at 907; *Swift v. City of Topeka*, 23 P. 1075 (Kan. 1890).

n38. *House v. Cramer*, 112 N.W. 3, 3 (Iowa 1907).

n39. Id.

n40. Id.

n41. *Liebrecht v. Crandall*, 126 N.W. 69, 69-70 (Minn. 1910).

n42. *Harder v. City of Chicago*, 85 N.E. 255 (Ill. 1908) (this era seems to have ended with this case, which upheld a registration license requirement for owners of carts, wagons and carriages within Chicago city limits).

n43. See, e.g., Roger *Roots*, *Are Cops Constitutional?*, 11 *Seton Hall Const. L.J.* 685, 695 n.45 (2001) (citing *Kennard v. Burton*, 25 Me. 39 (1845)).

n44. See, e.g., *Shiver v. Tift*, 85 S.E. 1031, 1033 (Ga. 1915) (citing *City of Rome v. Suddeth*, 42 S.E. 1032 (Ga. 1902)) ("[A] person has a **right to travel** on a highway, and there is no rule of law which prevents him from driving a nervous, high-strung horse."); *City of Covington v. Dalheim*, 102 S.W. 829 (Ky. 1907).

n45. *Swift v. City of Topeka*, 23 P. 1075 (Kan. 1890).

n46. Id. at 1075.

n47. Id.

n48. See *id.* at 1076.

n49. Id. (emphasis added).

n50. Id. (emphasis added).

n51. *City of Chicago v. Banker*, 112 Ill. App. 94 (1904).

n52. Id. at 99.

n53. Id.

n54. 11 Am. Jur. Constitutional Law 329, at 1135 (1937) (emphasis added).

n55. *Swift*, 23 P. at 1076.

n56. See John Nowak & Ronald D. Rotunda, *Constitutional Law* (5th ed. 1995).

n57. See *id.*

n58. See Gregory B. Hartch, *Wrong Turns: A Critique of the Supreme Court's Right to Travel Cases*, 21 *Wm. Mitchell L. Rev.* 457, 484 (1995).

n59. *Id.*

n60. *Buck v. Kuykendall*, 267 U.S. 307 (1925).

n61. *Id.* at 314. The Supreme Court's dalliance with the issue apparently ended there. Over a three year period beginning in 1924, the Court dealt with a quartet of cases involving states' attempts to control and set rates and fares for private commercial carriers on state highways. See *Mich. Pub. Utils. Comm'n v. Duke*, 266 U.S. 570 (1925); *Buck v. Kuykendall*, 267 U.S. 307 (1925); *George W. Bush & Sons Co. v. Maloy*, 267 U.S. 317 (1925); *Frost v. R.R. Comm'n*, 271 U.S. 583 (1926). The Court struck down such stringent regulations based on the Commerce Clause and private property grounds, but left undecided whether personal, noncommercial automobile travel was a constitutional right. Interestingly, the Court declined to comment on statements by the Maryland Attorney General to the effect that "the **right of travel** over the highway in the customary and ordinary way" was generally recognized. *Buck*, 267 U.S. at 321.

n62. *Simeone v. Lindsay*, 65 A. 778, 780 (Del. Super. Ct. 1907).

n63. See, e.g., *id.*

n64. See, e.g., *Hennessey v. Taylor*, 76 N.E. 224 (Mass. 1905).

n65. See *Simeone*, 65 A. at 780.

n66. See *McShane*, *supra* note 11.

n67. *To Test Chicago's Automobile Order*, N.Y. Times, June 20, 1899, at 4.

n68. *Automobiles in Chicago*, N.Y. Times, June 22, 1899, at 3.

n69. *Topics of the Times*, N.Y. Times, July 4, 1899, at 6.

n70. *Id.*

n71. *Id.*

n72. *Topics of the Times*, N.Y. Times, Oct. 30, 1899, at 6.

n73. *Automobiles in the Parks*, N.Y. Times, Nov. 11, 1899, at 6.

n74. *Topics of the Times*, N.Y. Times, Nov. 5, 1899, at 22.

n75. *Id.*

n76. *Automobilists Want Test*, N.Y. Times, May 5, 1901, at 3.

n77. See *id.*

n78. See *id.*

n79. James J. Flink, *America Adopts the Automobile, 1895-1910*, at 169 (1970).

n80. *Id.*; *Farson v. City of Chicago*, 138 F. 184 (C.C.N.D. Ill. 1905) (declining to grant federal question jurisdiction).

n81. Flink, *supra* note 79, at 169.

n82. *Id.*

n83. *Id.*

n84. *Id.*

n85. *Id.* at 163.

n86. *Id.*

n87. Gilbert Love, A History of the Automobile Club of Pittsburgh During the First Half-Century of Its Existence, *The Pittsburgh Automobilst*, March 1953.

n88. See Flink, *supra* note 79, at 163.

n89. See Daniel Moynihan, *The Soulless City*, *American Heritage*, Feb. 1969, at 5, 81.

n90. 45 Cong. Rec. 8072 (daily ed. June 14, 1912) (statements of Rep. Sims quoting Robert G. Cousins).

n91. *Id.*

n92. See generally Leland L. Sage, *A History of Iowa* (1974).

n93. Dorothy Schwieder, *Iowa: The Middle Land* 150 (1996).

n94. *Id.*

n95. Sage, *supra* note 92, at 221.

n96. 45 Cong. Rec. 8072 (daily ed. June 14, 1910) (statement of Rep. Sims quoting Robert G. Cousins).

n97. *Id.*

n98. *Id.*

n99. *Id.* at 8073.

n100. *Id.*

n101. *Id.*

n102. *Id.*

n103. Flink, *supra* note 79, at 169.

n104. See McShane, *supra* note 11.

n105. See Richard E. Dragon, *Registered in R.I.: Motor Vehicle License Plates and the Registration of Motor Vehicles in Rhode Island Since 1904*, at mxi (1998).

n106. *Id.* at 28.

n107. Licensing of Chauffeurs, N.Y. Times, June 3, 1902, at 5 (emphasis added).

n108. See *id.*

n109. *Id.*

n110. *Id.*

n111. *Id.*

n112. *Id.*

n113. Auto Clubs Desire Uniform State Laws, Providence Journal, Nov. 24, 1907, at 1-3.

n114. See, e.g., Roger *Roots*, A Muckraker's Aftermath: The Jungle of Meat-Packing Regulation After a Century, 27 *Wm. Mitchell L. Rev.* 2413 (2001) (describing alteration of American legal culture in the aftermath of scares regarding meat quality).

n115. See James J. Flink, *The Car Culture* 8 (1975).

n116. Morris M. Musselman, Get a Horse! The Story of the Automobile in America 212-13 (1950).

n117. See, e.g., *id.*

n118. *Id.* at 214.

n119. The first highway limited exclusively to automobile traffic was apparently the Bronx River Parkway in New York City. Gerald Carson, Supreme City: New York in the 20s, *American Heritage*, Nov. 1988, at 45, 50-51. The Parkway, opened to automobile traffic alone in the fall of 1925, signaled the end of the highway as an all-purpose, all-vehicle transportation thoroughfare. See *id.* The increased speeds with which modern autos traveled made slowing and stopping to accommodate draft animals such as mules, horses, and oxen, a matter of great danger in urban environments.

n120. *Gardner v. City of Brunswick*, 28 S.E.2d 135, 138 (Ga. 1943).

n121. See *Kane v. New Jersey*, 242 U.S. 160, 167 (1916).

n122. See *id.*

n123. *Slusher v. Safety Coach Transit Co.*, 17 S.W.2d 1012, 1012 (Ky. 1929).

n124. See *City of Burlington v. Unterkircher*, 68 N.W. 795 (Iowa 1896).

n125. *Harder v. City of Chicago*, 85 N.E. 255, 256 (Ill. 1908).

n126. *City of San Antonio v. Besteiro*, 209 S.W. 472 (Tex. Civ. App. 1919).

n127. Friedman, *supra* note 3, at 278.

n128. Dragon, *supra* note 105, at 28.

n129. *Id.*

n130. See, e.g., *Auto Clubs Desire Uniform State Laws*, *Providence Journal*, Nov. 24, 1907, at 1, 3.

n131. *Id.* at 3.

n132. *Id.*

n133. 45 Cong. Rec. 8072 (daily ed. June 14, 1910).

n134. Doctrines of federalism probably explain the early lack of federal involvement in traffic regulation issues. As early as 1915, the United States Supreme Court indicated that local traffic regulations were the domains of the states. See *Hendrick v. Maryland*, 235 U.S. 610 (1915) (upholding state auto registration statutes on police power grounds). The Court also sustained regulation by states intended to raise revenues from automobile users to compensate for state maintenance of the roadways. *Id.* at 624. However, the Court never squarely answered the claim of a New Jersey litigant that "The right to use the streets is a natural right of every citizen which cannot be converted into a privilege." *Kane v. State of New Jersey*, 242 U.S. 160, 162 (1916).

n135. Michael Ellis, *Texas Driver's License Scam*, 6 *Antishyster* 42 (1996).

n136. See *id.*

n137. See *id.*

n138. *Id.*

n139. *Id.*

n140. See *Teche Lines, Inc. v. Danforth*, 12 So. 2d 784, 787 (Miss. 1943).

n141. *Id.*

n142. See *Lavinghouse v. Miss. Highway Safety Patrol*, 620 So. 2d 971-971 (Miss. 1993) (stating that driving is a privilege, not a fundamental right in Mississippi).

n143. 37 C.J.S. Licenses 81 (1925).

n144. *Id.*

n145. See 53 C.J.S. Licenses 1-102 (1987).

n146. *Ex parte Hoffert*, 148 N.W. 20, 22 (S.D. 1914).

n147. *Id.*

n148. See, e.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969) (holding that the right to interstate travel prohibits states from enacting laws designed to make relocation to another state difficult).

n149. See Hartch, *supra* note 58, at 457-84.

n150. Safe Streets Act of 1994, *Cal. Veh. Code* 14607.4(a) (West 2000).

n151. Id.

n152. *Buhl v. Hannigan*, 20 Cal. Rptr. 2d 740, 743 (Ct. App. 1993).

n153. Id.

n154. *State v. Kouba*, 319 N.W.2d 161, 163 (N.D. 1982).

n155. Friedman, *supra* note 3, at 278.

n156. Friedman, *supra* note 2, at 552.

n157. Friedman, *supra* note 3, at 279.

n158. Id. at 279.

n159. See Claire Corbett, *Car Crime 1* (2003).

n160. See John Schaffer, Comment, Just Say No ... Driving: *Rushworth v. Registrar of Motor Vehicles and The Massachusetts License Suspension Law*, 28 *New Eng. L. Rev.* 1071, 1091 (1994).

n161. Id. (stating that the 1990 U.S. Census revealed that ninety percent of workers who work outside the home rely on automobile driving to get to work).

n162. Corbett, *supra* note 159, at 3.