

Comment on equity and the MUTCD

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Problem and Policy

This is a general discussion of the implications of the MUTCD on equity which I will refer to later in comments on specific sections.

Many comments on the docket treat “equity” as a meaningless word that one mentions before “sustainability”, which is in turn a word one uses after “equity.” It has an air of “I know it when I see it.” Generally it is used as a synonym for “not cars.”

The President has announced two general policies which shed some light on what the administration considers “equity” to mean:

1. Agency actions should not “inappropriately burden disadvantaged, vulnerable, or marginalized communities.”¹
2. “The Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”²

America has a long history of using traffic regulations for revenue raising or with discriminatory effect, whether against motorized or non-motorized road users. The phrases “pretext stop,” “driving while black,” and “speed trap town” are all in the American lexicon thanks to overregulation. Every time the MUTCD permits or requires a regulatory device instead of a warning sign, or permits or requires stricter regulation, thought should be given to how the devices will be abused. Changes to stop signs, speed limits, and crosswalk placement all give police opportunities or take them away.

¹January 20, 2021 order “Modernizing Regulatory Review”

²Executive order 13985

Examples

North Carolina

On the subject of “driving while black,” a good data-driven investigation is Baumgartner et al. (2018). Baumgartner and Epp explain their book:

In America’s protracted war on crime, police have used routine traffic stops as opportunities to search drivers for contraband. Police agencies have always understood that this crime-fighting strategy requires a very large number of stops for every interception of a significant drug shipment. At the same time, police have tacitly presumed – and hidden from public scrutiny – that middle-class white Americans would be mostly exempt from this aggressive approach.

In our new book, *Suspect Citizens*, we analyze more than 20 million traffic stops in North Carolina – using detailed data about the types of stops and particular officers involved. From these data, we document that successful drug busts are rare but the costs of many traffic stops are high. Not only have those costs been significantly underestimated, they have been borne disproportionately and persistently by young men of color. Although most traffic stops are ineffective in discovering drugs or other contraband, they alienate people subjected to them.³

Keep this in mind when allowing states to post low speed limits.

Florida

Sanders et al. (2017) reported on “walking while black” in Jacksonville, Florida:

The sheriff’s office says the enforcement of the full variety of pedestrian statutes is essential to keeping people alive in a city with one of the highest pedestrian fatality rates in the nation. The office also says the tickets are a useful crime-fighting tool, allowing officers to stop suspicious people and question them for guns and or drugs.

However, a ProPublica/Florida Times-Union analysis of five years of pedestrian tickets shows there is no strong relationship between where tickets are being issued and where people are being killed. The number of fatal crashes involving pedestrians, in fact, climbed every year from 2012 to 2016, the most recent years for which complete data is available. What the analysis does show is that the pedestrian tickets — typically costing \$65, but carrying the power to damage one’s credit or suspend a driver’s license if unpaid — were disproportionately issued to blacks, almost all of them in the city’s poorest neighborhoods. In the last five years, blacks

³<https://scholars.org/brief/what-20-million-traffic-stops-reveal-about-policing-and-race-america>

received 55 percent of all pedestrian tickets in Jacksonville, while only accounting for 29 percent of the population.

Keep this in mind when considering rules for crosswalks and pedestrian signs and signals.

While I do not agree with the whole of the city of Boston's complaint about midblock crosswalk rules, I do agree that a sufficiently obvious "desire line" is a factor to consider, much like operating speed should be considered when setting a speed limit. If you want to know what people think, look at what they do. And don't make a law you aren't willing to enforce as written.

Missouri

At the intersection of revenue-based enforcement and racial disparity, Department of Justice (2015) concluded

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. . . . Over time, Ferguson's police and municipal court practices have sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy among African Americans in particular. . . .

Ferguson's law enforcement practices overwhelmingly impact African Americans. Data collected by the Ferguson Police Department from 2012 to 2014 shows that African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson's population. African Americans are more than twice as likely as white drivers to be searched during vehicle stops even after controlling for non-race based variables such as the reason the vehicle stop was initiated, but are found in possession of contraband 26% less often than white drivers, suggesting officers are impermissibly considering race as a factor when determining whether to search. African Americans are more likely to be cited and arrested following a stop regardless of why the stop was initiated and are more likely to receive multiple citations during a single incident.

Ferguson is not that unusual except that race riots drew national attention and a Department of Justice investigation. Otherwise people would say "if you don't want a ticket, don't speed" and forget about it.

Massachusetts

Lincoln, Massachusetts is a rich, white town dominated by 2 acre zoning. Violent and property crime are nearly nonexistent. The most common nonconsensual contact between police and the public is traffic stops.

The town's speed limits were set in the 1950s. There is no record of an engineering study and speed limits have not been reviewed in the past 60 years. Stop signs are posted based on complaints about commuter traffic rather than accident records. "No right turn" signs are used to keep nonresidents and poorer residents from driving into the richer part of town.

Last year the police chief revealed his department's racial profiling statistics. Blacks and Hispanics are twice as likely to be pulled over as whites, relative to their population in the area. Nonresidents are targeted for enforcement, both as "suspicious" individuals and as commuters collectively. Police have complete discretion over who can be pulled over.

Blacks and Hispanics are about ten times as likely to be summonsed to court or arrested as you would expect from the population. They receive a majority of all summonses. A common charge is unlicensed driving. On average these groups are poorer and may lack a valid license because they owe money. Most license suspensions in America are for failure to pay fines, fees, or taxes rather than unsafe driving.⁴ Other drivers lack proof of legal residence and are not eligible for state licenses.

With politically progressive leadership Lincoln has a catch and release policy for dark-skinned people caught in town, favoring a summons over an arrest. But traffic policy and enforcement are driven by resident complaints. To a politician or a police officer in this sort of town greasing squeaky wheels is more important than equity or safety.

In Lowell, Massachusetts police officers are trained in "gang suppression through motor vehicle stops." A recent Appeals Court case⁵ involved a police officer who saw a Southeast Asian driver and decided he looked like a gang member. From that point any minor traffic law violation was going to result in a traffic stop and vehicle search. The alleged violation was going over the line at a stop sign. But the real violation was having the wrong color skin. This happens countless times every day.

The stop sign in Lowell should have been a yield sign.

Think of this when you give towns an option to set speed limits and post stop signs as favors to residents instead of strictly requiring warrants to be met.

Washington, D.C.

Farrell (2018) found that with 96% of tickets in Washington, D.C. issued by cameras, "a driver in a black-segregated area is over 17 times more likely to receive a moving violation (at a cost of 16 times more per resident) than in a white-segregated area." This despite a similar per-capita rate of crashes. In other words, robots may be color-blind but the people who deploy them are not.

⁴Department of Justice (2015) discusses Missouri law on that subject; Massachusetts has a long list of financial reasons for license suspension and nonrenewal.

⁵*Commonwealth v. Lang Lek*, 99 Mass. App. Ct. 199 (2021)

Think of this before imagining automated enforcement is a solution to discriminatory enforcement. Cameras are placed to raise revenue (which disproportionately affects the poor) and target groups without political influence.

Conclusion

Increasing police-public interactions has a disparate impact on disadvantaged, vulnerable, and marginalized communities. The Federal Highway Administration should think carefully before encouraging states to create more traffic violations.

References

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