

## **Pedestrian Mobilities at the Crossroads: The Contestation and Regulation of Jaywalking**

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California Assembly Bill (AB) No. 2147, commonly referred to as the “Freedom to Walk Act,” took effect on January 1, 2023. It virtually prohibits police officers from citing pedestrians who cross the street away from pedestrian crosswalks or intersections, all but legalizing “jaywalking.” However, this paper argues that AB 2147 is only a transformation of the existing enforcement regime, not a mobility reform. The dominance of car-centered urban mobility remains unchallenged. In fact, it highlights the accepted stability of the current system, where even seemingly significant reform can be passed without expecting a change in pedestrian behavior. The article outlines the historical issue of regulating pedestrians and cars in cities and how, with the production of the “jaywalker,” a public problem has been solved in a particular way and is now considered so stable that policing it is no longer deemed a necessary component. A way of explaining the stability of the current mobility system is through the concept of governmentality, which describes the ways in which populations allow themselves to be governed. The article concludes that this solution was not inevitable; as cases such as the Netherlands and China show, different paths to resolving this public problem are possible to either reinforce or challenge the dominance of automobility.

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On January 1, 2023, Assembly Bill (AB) No. 2147 took effect, practically legalizing jaywalking in California. Specifically, the bill also known as the “Freedom to Walk Act” prohibits police officers from stopping or citing pedestrians crossing the street if it is deemed safe to cross (Gardiner, 2022). After the bill was signed on September 30, 2022 (Shalby, 2022), Assemblymember Phil Ting explained the reform in a statement: “When expensive tickets and unnecessary confrontations with police impact only certain communities, it’s time to reconsider how we use our law enforcement resources and whether our jaywalking laws really do protect pedestrians” (Ting, 2022, para. 2). Before the introduction of AB 2147, jaywalking was unevenly enforced, with police officers disproportionately targeting marginalized populations. Loukaitou-Sideris and Ehrenfeucht (2012) assert that jaywalking citations are commonly used as a strategy to harass homeless populations (p. 178). Furthermore, people of color frequently find themselves the target of jaywalking citations. In Los Angeles, where the Black population makes up around 9% of the total, 32% of citations between 2010 and 2020 were issued to black jaywalkers (Fonseca, 2022) and according to California’s Racial and Identity Profiling Act Board, Black people are up to 4.5 times more likely to be stopped than White jaywalkers (Gardiner, 2022).

An earlier version of the reform was vetoed by Governor Newsom in 2021, citing the fact that California's traffic related fatality rate is the highest nationwide (Newsom, 2021, p. 1). According to the governor, pedestrians shared some of the blame in at least 63% of California's pedestrian fatalities, and he suggested that easing restrictions for jaywalkers might only make things worse. The new version of the bill passed partially due to a shared sense among officials that it will not significantly impact fatality numbers (Dorsey, 2022) and the inclusion of a five-year review period, after which the bill's effects will be assessed (Shalby, 2022). The language of the law, as well as conversations around it, show that while this addresses citation practices, it is not a larger infrastructural or legal change. Causes of jaywalking are not addressed, for example, by building more pedestrian crossings along pedestrian-desired paths, and pedestrians are still crossing at their own risk, bearing much of the responsibility (Assembly Bill 2147, 2022, p. 1).

This bill does not alter the existing relationship between cars and pedestrians; rather, in loosening enforcement regulations, it reaffirms automotive dominance. For once, the actual infrastructure in California remains unchanged. On West Adams Boulevard for example, a major artery for South Los Angeles, jaywalking may no longer be fully prohibited, but crosswalks are still a quarter of a mile apart. Besides, the bill includes the notable exception that citations are still permitted if a reasonably careful person would have deemed it unsafe to cross. As a result of this, police officers will still be able to issue fines or stop individuals at their own discretion by invoking unreasonable or careless behavior. Assembly member Ting brushed aside concerns of decreased pedestrian safety saying, "We're all pedestrians. What pedestrian crosses a street thinking, 'Hey, it would be a good idea to get in front of a car'? Nobody" (Dorsey, 2022, para. 13). This suggests that Ting and others do not see this bill as intended to significantly alter traffic behavior. Essentially, the behavioral code of jaywalking remains untouched, and it continues to be the pedestrian's responsibility to practice care.

While cars rule our city streets today, it was not always that way. In the early 20th century, the power relations between road users was a hotly debated public issue. As cars became more popular in the early 20th century, accidents, and fatalities, especially involving children, started to rise. A *New York Times* piece from 1924 highlighted the alarming death rates caused by car accidents by comparing the 7,000 monthly fatalities to the rate of 2,000 monthly deaths of U.S. soldiers during World War I (Stromberg, 2015). Other pieces compared the automobile to Moloch, a god worshiped by the Ammonites who supposedly demanded the sacrifice of children (Mars, 2013). The widely held opinion, as historian Peter Norton (2011) asserts, was that automobiles were a danger to the public; in fact, the public understanding of who the streets belonged to was so radically different from today that a judge in 1923 "angrily denounced the idea that you could ever have such a thing as a reckless pedestrian" (Mars, 2013, 13:02). The conflict between cars and pedestrians in these years developed from a private issue between those involved in an incident to a hotly debated public concern: Citizens formed lobbying groups, newspapers discussed the rising dangers of motorized traffic and some municipalities erected memorials for victims (Stromberg, 2015). An apex of the public contestation of urban mobility was reached in 1923, when 42,000 inhabitants of Cincinnati signed petitions that called for the mandatory installation of mechanical speed governors that would shut off car engines at 25 miles per hour (Norton, 2011, p. 96).

Motorists won out and achieved the car's dominant status of today, in part by recasting how the public thinks about who "owns" the road—and who is responsible for accidents between cars and pedestrians. Various

interested parties, including car manufacturers, dealerships, and motor clubs, came together under the self-described banner “motordom” (Norton, 2017, p. 336) to sway public opinion toward the automobile. They worked to gradually shift blame from cars to the people driving them. And over time the notion of a reckless person was expanded even further, including pedestrians. Rather than lobbying directly for legal reform, motordom attempted to cultivate a milieu influencing public perception: “We have recognized that in controlling traffic we must take into consideration the study of human psychology, rather than approach it solely as an engineering problem,” explained E. B. Lefferts from the Automobile Club of Southern California in 1927. “The ridicule of their fellow citizens is far more effective than any other means which might be adopted” (Novak, 2013, para. 10). Motordom began popularizing the term “jaywalking” to refer to pedestrians entering the street. A “jay” at that time was a derogatory moniker for “a person from a rural area who walked around and gawked at the city, oblivious to other pedestrians and traffic around them” (Mars & Kohlstedt, 2020, p. 137)—a hillbilly. “Jaywalking” was coined as a slur to associate the practice with idiocy, provoking ridicule and shame. What ultimately led to jaywalking legislation began as a cultural battle of discrediting those who crossed the street at their own risk and pleasure. Motordom successfully cultivated an “autophilic” milieu, the norms of which are illustrated by the term “jaywalking”: Pedestrians are cast as oblivious visitors to the urban landscape, traveling the terrain at their own risk and involving themselves in accidents largely due to their own ignorance.

This history of jaywalking shows how private incidents—the collision of a vehicle with a pedestrian—became a public issue, hotly debated in the public sphere. Various social and technical actors were considered and enrolled for a possible solution: journalists and concerned parents, automobile clubs, and car manufacturers, lawmakers, judges, traffic lights, and mechanical speed governors. All these and more participated in the stabilization of the issue that ultimately led to the sociotechnical system regulating urban mobility relations as we know them today. What ultimately stabilized is a system where streets largely belong to the automobile, and pedestrians need to practice care to avoid collision. They are mostly restricted to sidewalks and further regulated by crosswalks, traffic lights, pedestrian zones, road safety campaigns, and fines, while the notion of jaywalking has become common sense and encoded into law. Doing away with police enforcement of the issue, effectively legalizing jaywalking, does not fundamentally challenge those mobility relations. It remains the pedestrians’ responsibility to keep themselves safe, and it is unlikely that a judge today would categorically reject the notion of a reckless pedestrian.

The fact that Assemblymember Ting and other lawmakers stress that the “Freedom to Walk Act” should not affect pedestrians’ behavior shows how stable the current sociotechnical system around jaywalking has become: Even profound legal reform is seen as nontransformative. Explicit enforcement is no longer required. Motordom’s concept of the jaywalker has become part of the institutions, practices, calculations, and procedures by which constituents allow themselves to be governed. This voluntary self-governance of a population is what Foucault (1983) refers to as governmentality. A logic of governmentality operates at the heart of modern mobility practices and regulations in general, as Packer (2003) has shown. It is driven by a logic of safety in order to discipline mobile subjects into particular modes of behavior (p. 153) and has become a key feature of how institutions and individuals operate beyond the state’s direct involvement (Packer, 2008). The deregulation of jaywalking confirms this. AB 2147 further asserts that road safety is the pedestrian’s personal responsibility. Encounters between drivers and jaywalkers are a declining public concern in need of regulation and enforcement. After fierce public contestation in the 1920s, the problem has advanced toward resolution, and following decades of relative stability, the state of California announced its sublation.

California's case is only one solution to this public issue, and its trajectory was far from inevitable. Different sociotechnical systems can be produced, enrolling other human and nonhuman actors along the way. The Netherlands experienced similar debates in the 1970s when rising fatality rates, particularly affecting children, caused public outcry. A growing middle-class with more disposable income significantly increased automobility, which sparked the formation of interest groups against the associated rise in accidents (Wagenbuur, 2011). The group *Stop de Kindermoord* ("stop child murder") proved particularly influential in swaying public opinion by orchestrating bicycle demonstrations, protesting at accident sites, and organizing road closures to let children play on the streets (van der Zee, 2015). *Stop de Kindermoord* is seen as a significant contributor to the renewed rise of cycling mobility in the Netherlands in the 1970s and why the country today hosts over 35,000 km of segregated bicycle lanes—a quarter of the country's entire road network. Here, the public negotiation of a similar problem has resulted in a fundamentally different solution affecting infrastructure, laws, and behaviors. The Dutch example suggests that the public sphere can have a large impact on the stabilization and contestation of mobility hierarchies. In the future, interest groups in the United States might well change the balance of power—perhaps producing an environment in favor of pedestrianism, bicycles, or public transport.

Conversely, contemporary security and surveillance technologies may further entrench the automobile dominance of the current sociotechnical mobility system. This can be seen in the Chinese case, where a similar public issue of urban mobility is playing out at the moment: In early March 2018, large cities across China, including Shanghai and Shenzhen, introduced facial recognition at its intersections to record, identify, and fine jaywalkers (Xiao & Xu, 2018). Compared to the United States and the Netherlands, rising automobility is a fairly new phenomenon, and fatalities involving pedestrians are a more recent public problem. Similar to how the United States experienced a change in the social system of pedestrianism—from the unimaginability of the "reckless pedestrian" to the normalization of the "jaywalker"—Chinese authorities are trying to tackle the common sense that people can cross roads in big groups regardless of the traffic situation—a phenomenon so normalized it is sometimes referred to as *zhong guo shi guo ma lu* (中国式过马路), "Chinese style of crossing the road" (Liu, 2013). These methods are said to be linked to the country's social credit system and are part of a wider logic of surveillance and control. To portray it as merely addressing jaywalking would be an oversimplification, but the increased regulation of mobility practices at intersections is part of it. Similar to the U.S. case a century earlier, public shaming and ridicule is central to the cultivation of a new milieu: Large screens at some intersections show footage of jaywalkers, exposing their last names and partial ID numbers. Just like E. B. Lefferts of motordom, Chinese officials say that the psychological element is vital in successfully altering public perception and behavior (Mozur, 2018). Here, as in the United States, the public issue of urban mobility is stabilizing in favor of cars, but the sociotechnical system supporting this hierarchy is significantly different. AB 2147 suggests that jaywalking has become a nonissue, but if it becomes a contested public problem again in the future, today's technological capabilities may strengthen automotive dominance.

While recent legal reforms in California appear to signal transformative progress of urban mobility practices, I have argued that it is an expression of the status quo. The passing of AB 2147 suggests that the issue has reached a degree of stability where jaywalking is no longer considered a public problem. But this equilibrium may not be an endpoint. Historical and contemporary examples elsewhere prove that automobility is not a teleological conclusion: The Dutch case reveals the power of the public sphere in

renegotiating the urban balance of power while events in China express a potential entrenchment of car dominance aided by contemporary technology. Each case displays a different sociotechnical system constructed around a similar issue. It remains to be seen if people in California will demand more from their renewed "freedom to walk." Theoretically, this deregulation could once again kick-start debates on the order of things on our streets. It could enable a new round of public negotiations about mobility relations, and perhaps this time the mechanical speed governor will come out on top. But, of course, the milieu is not the same as in the 1920s, and if anything, the car's dominance in public space is less likely to be challenged. The term "jaywalking" is now ingrained in public consciousness and with it a certain understanding of the power relations between road users.

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