

Did You Know That You're Paying Part of the Cost of My Car?

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Gregory H. Shill, [Should Law Subsidize Driving?](#), 95 *N.Y.U. L. Rev.* 498 (2020).

Professor Gregory H. Shill's recent article, *Should Law Subsidize Driving?*, reminds us of the hidden costs of driving that are borne, largely unrecognized, by the public.

When most people consider the costs of owning a car, they factor in typical expenses such as monthly loan or lease payments, insurance, maintenance, and gas. They probably do not consider other costs that are less directly related to their automobile ownership, including the construction and maintenance expense for public roadways, the negative effects their vehicles have on pedestrians and cyclists, and the health impacts of their tailpipe emissions.

By subsidizing driving in these concealed ways, the law partially externalizes the cost of driving, thereby transferring these disguised expenses to others and encouraging people to drive more than they otherwise would. And for the past century, laws and regulations have actively encouraged driving, quite possibly to the detriment of everyone.

Professor Shill begins his article by listing and describing the many negative effects of private automobiles, including death, personal injury, and property damage and the production of greenhouse gases. These downsides on their own do not necessarily argue against the widespread use of private cars, since the costs of driving must be weighed against its benefits. But he goes on to demonstrate, in extraordinary detail, that the growth of the private auto did not just happen on its own.

There are many ways in which our system of laws and regulations promotes and bankrolls the private use of the automobile. Professor Shill observes, "These subsidies lower the price of driving by comprehensively reassigning its costs to non-drivers and society at large." (P. 498.)

In short, everyone in America, including the 100 million non-drivers, is indirectly paying part of the cost of driving, largely without even realizing it. Rather than weighing costs against benefits, we have consistently encouraged people to drive by underwriting driving.

The first two parts of Professor Shill's article focus on the two most straightforward targets: laws relating directly to traffic and land use laws. Safety laws such as speed limits regularly go unenforced, allowing drivers greater freedom at the expense of those who are inconvenienced and harmed by this excess speed. This latter group most obviously includes accident victims other than vehicle occupants, particularly those on foot or on bicycles.

Moreover, the method of setting speed limits is arbitrary and obsolete, with pressure from traffic violators sometimes causing local officials to increase speed limits. Drivers rarely suffer for the failure to yield in a crosswalk, and jaywalking laws favor drivers over those on foot. Thus, the law not only encourages driving by forcing others to pay part of its cost, but "almost certainly produces a higher level of not just driving in general, but of negligent, reckless, and wasteful driving in particular." (P. 504.)

Even though nonmotorists receive only limited benefits from the driving subsidies they are providing, "[a] person who does not own a car is still conscripted into underwriting driving in numerous ways, overpaying for everything from groceries to commuting." (*Id.*) In short, "[n]onmotorists pay motorists to drive." (*Id.*) Professor Shill demonstrates that the typical household may pay indirect costs such as these amounting to \$1,012 to \$1,488 per year. (P. 538.)

In the land use arena, zoning laws such as height limits and minimum lot sizes encourage sprawl, by restricting density and forcing would-be occupants to more far-flung locations. These artificial caps on population density increase the amount of driving that is necessary while reducing the likelihood that mass transit alternatives will flourish.

Free parking is not free, of course, which means that much of the cost of on-street parking is paid by someone other than the owner of the parked vehicle. Moreover, minimum parking requirements set forth in zoning codes mean that much valuable downtown land must be devoted to the storage of empty automobiles, driving up the cost of residences and exacerbating existing shortages of affordable housing in desirable locations. Professor Shill notes, somewhat ironically, that many of America's most walkable cities could not legally be built today, since their layouts would violate subsequently enacted land use laws. (P. 553.)

Other forms of subsidy are even more hidden. For example, the growing popularity of taller vehicles, particularly SUVs, leads to more severe accidents and higher levels of dangerous pollutants, meaning that victims of SUV accidents are paying part of the costs of other people's desire to operate these vehicles. The growing popularity of electric and hybrid vehicles reduces the per-mile cost of operation, thereby encouraging people to drive more.

The process of building and maintaining roads creates additional pollution. Tort law generally requires accident victims to prove driver negligence even though, Professor Shill argues, driving is an ultra-hazardous activity that should be held to a more pro-plaintiff strict liability standard. Vehicle safety standards consider automobile passengers but not those outside of the vehicle. Contract law often requires privity, making it difficult for accident victims other than a vehicle's owner to recover from the product's manufacturer.

Professor Shill does a thorough job of demonstrating, in clear prose and with much support, that vehicle owners are not paying all of the costs of driving. In other words, non-owners are suffering from the many externalities that driving creates and paying a portion of every vehicle's overall cost.

He also shows the many ways in which this type of cost-shifting is intentional, with laws designed to encourage driving and discourage the use of mass transit. His final section is somewhat pessimistic, suggesting that reversing these trends will be unpopular and will take generations to accomplish, assuming that government officials even have the desire and stamina to begin this process. (Pp. 577-78.)

Once these laws begin to be modified, he concludes, their replacements "should be reoriented towards consensus social priorities, such as health, systematic safety, prosperity, sustainability, and equity." (P. 578.)

Ultimately, Professor Shill recognizes that the automobile is sufficiently necessary that existing rules are unlikely to change much. But he also reminds us that "[a] different bargain is possible." (P. 579.)

Our current system of driving laws and regulations does not merely reflect vehicle owners' preference for driving but actually helped create that preference by partially paying for it. And that system "produces a higher level and risk of driving than would be socially optimal." (P. 579.)

It is up to us whether we continue to live under such a regime or seek to modify it. Contributions such as Professor Shill's excellent article do an effective job of highlighting these issues, so that when decisions of this nature are made, they can be made with a full knowledge and understanding of the underlying facts.

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