

9-2021

## Metanarratives of Traffic Policing

Jordan Blair Woods

Follow this and additional works at: [https://opencommons.uconn.edu/law\\_review](https://opencommons.uconn.edu/law_review)

---

### Recommended Citation

Woods, Jordan Blair, "Metanarratives of Traffic Policing" (2021). *Connecticut Law Review*. 505.  
[https://opencommons.uconn.edu/law\\_review/505](https://opencommons.uconn.edu/law_review/505)

# CONNECTICUT LAW REVIEW

---

VOLUME 53

SEPTEMBER 2021

NUMBER 3

---

## Essay

### Metanarratives of Traffic Policing

JORDAN BLAIR WOODS

*This Essay, written for the Commentary Issue on police and prison abolition, draws on principles of postmodern feminist and queer theory to evaluate the dominance of a police-reliant, “one-size-fits-all” model of traffic enforcement in the United States. Traffic stops are currently the most common interaction between police and civilians in the United States and are a persistent source of racial and economic injustice. This Essay theorizes the dominance of a police-reliant, one-size-fits-all model of traffic enforcement in terms of metanarratives of public order and public safety. As discussed, these metanarratives shape the structure of police agencies, the nature of the police function, and police behavior with regard to traffic. Individuals and societal institutions also internalize these metanarratives in ways that normalize the idea that traffic enforcement is impossible without the police.*

*In shaping our political and social perceptions of what is possible in the traffic space, metanarratives of public order and public safety sustain and justify dominant power structures that subjugate and control over-policed and over-criminalized populations and ignore their lived experiences. This Essay begins a conversation that illuminates how in distrusting and deconstructing metanarratives, postmodern feminist and queer theories offer conceptual tools to move beyond a police-reliant, one-size-fits-all model of traffic enforcement. Specifically, these theories offer support for social movements that (1) challenge metanarratives of public order and public safety that sustain primary reliance on police in traffic enforcement, and (2) reimagine the traffic space through competing interpretations of public order and public safety that are grounded in the perspectives and experiences of over-policed and over-criminalized communities.*

## ESSAY CONTENTS

INTRODUCTION .....	647
I. ONE-SIZE-FITS-ALL TRAFFIC ENFORCEMENT .....	651
A.    DEFINING METANARRATIVES.....	651
B.    PUBLIC ORDER AND PUBLIC SAFETY METANARRATIVES .....	652
C.    POLICE STRUCTURE AND BEHAVIOR .....	655
D.    INTERNALIZATION OF METANARRATIVES IN SOCIETY .....	658
II. DESTABILIZING ONE-SIZE-FITS-ALL TRAFFIC ENFORCEMENT .....	661
A.    THE HISTORICAL CONTINGENCY OF POLICE-INITIATED TRAFFIC ENFORCEMENT .....	661
B.    TRAFFIC ENFORCEMENT BASED ON NEW UNDERSTANDINGS OF PUBLIC ORDER AND PUBLIC SAFETY .....	663
CONCLUSION.....	665



# Metanarratives of Traffic Policing

JORDAN BLAIR WOODS\*

## INTRODUCTION

Calls for removing police from traffic enforcement have grown in the wake of nationwide protests and social mobilization against police violence.<sup>1</sup> Consider the following examples. As part of a comprehensive plan to reimagine public safety, in July 2020, the City of Berkeley, California, voted in favor of a groundbreaking proposal that would be the first in the country to remove police from traffic enforcement.<sup>2</sup> The proposal directs the city to create a Department of Transportation staffed by unarmed civil servants who would be in charge of enforcing traffic violations.<sup>3</sup> Investing in non-police alternatives to enforce traffic laws was one of two items in the

---

\* Associate Professor of Law and Faculty Director of the Richard B. Atkinson LGBTQ Law and Policy Program, University of Arkansas School of Law, Fayetteville. I gratefully acknowledge the University of Arkansas School of Law library staff, and especially Cathy Chick, for their research assistance. Thank you to the editors and staff at the *Connecticut Law Review* for their careful edits, insightful suggestions, and work.

<sup>1</sup> See, e.g., Kellen Browning & Jill Cowan, *How Berkeley Could Remove the Police from Traffic Stops*, N.Y. TIMES (July 9, 2020), <https://www.nytimes.com/2020/07/09/us/berkeley-ca-police-department-reform.html> (discussing reforms in the city of Berkeley, California, to remove police from traffic enforcement); Julianne Cuba, *Vision Zero Cities: Removing Police from Traffic Enforcement Is Crucial—and Hard!*, STREETS BLOG (Oct. 21, 2020), <https://nyc.streetsblog.org/2020/10/21/vision-zero-cities-removing-police-from-traffic-enforcement-and-self-enforced-streets> (noting that five experts at the annual Transportation Alternatives' Vision Zero Cities conference “made it clear that cities can—and should—move past the current system of police-overseen traffic enforcement because it will be better for safety as well as remove a major racial flashpoint”); Rebecca Tan, *Should Police Be in Charge of Traffic Enforcement? In a Suburb Beset by Racial Inequalities, Lawmakers Aren't Sure.*, WASH. POST (Aug. 10, 2020, 9:35 AM), [https://www.washingtonpost.com/local/md-politics/montgomery-police-bias-traffic-/2020/08/07/818fd860-d72e-11ea-aff6-220dd3a14741\\_story.html](https://www.washingtonpost.com/local/md-politics/montgomery-police-bias-traffic-/2020/08/07/818fd860-d72e-11ea-aff6-220dd3a14741_story.html) (discussing a study commissioned in Montgomery County, Maryland, “to figure out whether—and how—Montgomery might be able to move certain traffic enforcement functions out of the police department and into other government agencies”). For scholarly perspectives on the issue, see Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199 (2007) (discussing traffic automation); SARAH A. SEO, JUST. COLLABORATIVE INST., A PATH TO NON-POLICE ENFORCEMENT OF CIVIL TRAFFIC VIOLATIONS 2 (2020), <https://tjcinstitute.com/wp-content/uploads/2020/09/non-police-enforcement-of-civil-traffic-violations.pdf> (discussing non-police enforcement of civil traffic violations); Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471 (2021) [hereinafter Woods, *Traffic Without the Police*]; Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543, 1625–28 (2019) (discussing the separation of removing traffic monitoring powers from traditional police powers).

<sup>2</sup> Rachel Sandler, *Berkeley Will Become 1st U.S. City to Remove Police from Traffic Stops*, FORBES (July 15, 2020, 8:22 PM), <https://www.forbes.com/sites/rachelsandler/2020/07/14/berkeley-may-become-1st-us-city-to-remove-police-from-traffic-stops/?sh=5de8178970fa>.

<sup>3</sup> Browning & Cowan, *supra* note 1; Sandler, *supra* note 2.

comprehensive plan estimated to eventually lead to reducing the Berkeley Police Department's budget by half.<sup>4</sup>

In September 2020, New York Attorney General Letitia James urged the City of New York to remove the New York City Police Department (NYPD) from routine traffic enforcement.<sup>5</sup> The recommendation stemmed from an investigation into the death of Allan Feliz, a thirty-one-year-old man who was killed by officers during a traffic stop initiated for Feliz's alleged failure to wear a seatbelt.<sup>6</sup> A few months before Feliz's death, the New York Attorney General's Office stressed in a report following the NYPD's response to demonstrations following the killing of George Floyd that "[a]rmed police officers are not needed for traffic enforcement, particularly when the underlying conduct in question is not criminal, such as a broken tail light, speeding, or not wearing a seatbelt."<sup>7</sup>

In May 2021, the City of Brooklyn Center, Minnesota also passed a sweeping public safety resolution that paved the way for a number of police reforms in the city, including the creation of a division of unarmed civilians to enforce non-moving traffic violations.<sup>8</sup> The city council passed the resolution in the aftermath of two separate fatal shootings of young men by Brooklyn Center police officers.<sup>9</sup> One of the victims, twenty-year-old Daunte Wright, was unarmed and shot and killed by an officer during a traffic stop in April 2021, roughly one year after the murder of George Floyd.<sup>10</sup> Daunte Wright's killing sparked new protests nationwide about police violence, especially against people of color during traffic stops.<sup>11</sup>

As calls for removing police from traffic enforcement grow, critics in law enforcement circles are advancing concerns that connect to broader themes of public order and public safety. For instance, some critics argue that removing

---

<sup>4</sup> Eric Rogers, *Berkeley City Council Cuts Police Budget by 12%, Reduces Department Scope*, DAILY CALIFORNIAN (July 16, 2020), <https://www.dailycal.org/2020/07/15/berkeley-city-council-cuts-police-budget-12-reduces-department-scope>.

<sup>5</sup> SPECIAL INVESTIGATIONS & PROSECUTIONS UNIT, N.Y. STATE OFF. OF THE ATT'Y GEN., REPORT ON THE INVESTIGATION INTO THE DEATH OF ALLAN FELIZ 10–11 (2020), [https://ag.ny.gov/sites/default/files/sipu\\_allan\\_feliz\\_report\\_final.links\\_.pdf](https://ag.ny.gov/sites/default/files/sipu_allan_feliz_report_final.links_.pdf).

<sup>6</sup> *Id.* at 1–2, 10.

<sup>7</sup> N.Y. STATE OFF. OF THE ATT'Y GEN., PRELIMINARY REPORT ON THE NEW YORK CITY POLICE DEPARTMENT'S RESPONSE TO DEMONSTRATIONS FOLLOWING THE DEATH OF GEORGE FLOYD 39 (2020), <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf>.

<sup>8</sup> Andy Mannix, *Brooklyn Center Passes Police Reform Package*, STAR TRIB. (May 15, 2021, 8:50 PM), <https://www.startribune.com/brooklyn-center-passes-police-reform-package/600057779/?refresh=true>.

<sup>9</sup> *Id.*

<sup>10</sup> The other victim, Kobe Dimock-Heisler, was killed by police during a mental health crisis call in August 2019. *Id.*; see also Rochelle Olson, *Hennepin County Won't File Charges Against Brooklyn Center Officers in Fatal 2019 Shooting*, STAR TRIB. (Aug. 6, 2020, 3:00 PM), <https://www.startribune.com/hennepin-county-won-t-file-charges-against-brooklyn-center-officers-in-fatal-shooting/572015972/>.

<sup>11</sup> Mannix, *supra* note 8; see also Madeline Holcombe, *The Police Shooting of Daunte Wright has Sparked Nights of Protests and Days of Fast-Moving Case Developments*, CNN (Apr. 16, 2021, 1:13 PM), <https://www.cnn.com/2021/04/16/us/daunte-wright-minnesota-shooting-friday/index.html>.

police from traffic enforcement is “anti-public safety”<sup>12</sup> and warn that localities “will end up with more crashes and more fatalities.”<sup>13</sup> They have also claimed that removing police from traffic enforcement will strip the police of a key tool in criminal investigations.<sup>14</sup> In addition, critics have stressed that having no one to respond to traffic accidents is what “defunding [the police] would actually look like.”<sup>15</sup>

The perspectives on both sides of this debate illuminate why traffic is essential to consider in social and legal projects that further police abolition and defunding goals. Traffic enforcement has a central role in policing today.<sup>16</sup> Traffic stops are currently the most common interaction between police and civilians in the United States<sup>17</sup> and are a persistent source of racial and economic injustice.<sup>18</sup> At the same time, traffic stops are hailed in U.S. law enforcement circles as an easy and cost-effective tool of criminal investigation.<sup>19</sup>

In other work, I have argued that ideas and methods in postmodern feminism and queer theory provide conceptual frameworks that assist in

---

<sup>12</sup> Peter Dujardin, *Virginia Could Make It Harder for Officers to Pull You Over. Police Aren't Happy.*, DAILY PRESS (Oct. 11, 2020, 7:45AM), <https://www.dailypress.com/news/crime/dp-nw-general-assembly-police-20201011-g3ftvpea2ncwjeqswa7qckb3fi-story.html> (quoting York-Poquoson Sheriff J.D. “Danny” Diggs).

<sup>13</sup> *Id.* (quoting Dana Schrad, executive Director of the Virginia Association of Chiefs of Police).

<sup>14</sup> *State Your Case: Do We Need Traffic Cops?*, POLICE1 (Dec. 1, 2020), <https://www.police1.com/traffic-patrol/articles/state-your-case-do-we-need-traffic-cops-yZjtUWNYTxTRPjgb/>.

<sup>15</sup> Gregory Hoyt, *LAPD Officially Defunded By \$150 Million, Will Stop Responding to Traffic Accidents, Reduce Robbery, Homicide Divisions*, LAW ENF'T TODAY (Nov. 8, 2020), <https://www.lawenforcementtoday.com/report-what-the-lapds-150m-defunding-is-going-to-look-like/>.

<sup>16</sup> David A. Harris, “*Driving While Black*” and All Other Traffic Offenses: *The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 560 (1997) (“[P]olice use traffic regulations to investigate many innocent citizens.”); Wayne R. LaFave, *The “Routine Traffic Stop” from Start to Finish: Too Much “Routine,” Not Enough Fourth Amendment*, 102 MICH. L. REV. 1843, 1847 (2004) (recognizing that “police have co-opted our traffic codes as a weapon to be used in the ‘war on drugs’”).

<sup>17</sup> FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 30 (2018) (“[T]raffic stops are the most common type of encounter that Americans have with the police. . .”).

<sup>18</sup> *Id.* at 25–26; Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 130 (2017); Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1030–31 (2002) [hereinafter Carbado, *(E)Racing the Fourth Amendment*]; Devon W. Carbado & Cheryl I. Harris, *Undocumented Criminal Procedure*, 58 UCLA L. REV. 1543, 1578–81, 1584 (2011); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIAMI L. REV. 425, 427–32 (1997); Samuel R. Gross & Katherine Y. Barnes, *Road Work: Racial Profiling and Drug Interdiction on the Highway*, 101 MICH. L. REV. 651, 687–89, 694 (2002); Harris, *supra* note 16, at 546; Kevin R. Johnson, Essay, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1007 (2010); Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 333–34 (1998); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 272; Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 958 (1999).

<sup>19</sup> Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 656 (2019) [hereinafter Woods, *Policing, Danger Narratives, and Routine Traffic Stops*].

deconstructing and destabilizing the contemporary policing order.<sup>20</sup> This Essay advances that conversation by using traffic enforcement as a lens to scrutinize how metanarratives<sup>21</sup> of public order and public safety maintain and legitimize the contemporary policing order in the United States.<sup>22</sup> These metanarratives sustain and justify dominant power structures in society that subjugate and control marginalized communities, including Black, Latinx, and other people of color, LGBTQ populations, and poor and homeless individuals.<sup>23</sup> Postmodern feminism and queer theory offer conceptual support for movements that deconstruct these metanarratives and reimagine the traffic space through competing interpretations of public order and public safety from the perspective of marginalized and disempowered communities.<sup>24</sup>

The remainder of this Essay proceeds as follows. Part I draws on postmodern feminist and queer theory to explain the dominance of a “one-size-fits-all” model of traffic enforcement in the United States. This model relies on the police to enforce traffic laws. The analysis explains the dominance of this police-reliant, one-size-fits-all model of traffic enforcement in terms of metanarratives of public order and public safety, which shape the structure of police agencies, the nature of the police function, and police behavior.<sup>25</sup> The analysis further describes how individuals and societal institutions internalize those metanarratives in ways that normalize how police are structured, what police do, and how police behave.<sup>26</sup> The widespread assumption that traffic enforcement is impossible without the police illustrates how metanarratives of public order and public safety shape our political and social realities of what is possible in the traffic space.<sup>27</sup>

As discussed in Part II, in distrusting metanarratives and universal truths, postmodern feminist and queer theories illuminate how police-initiated traffic enforcement is historically contingent and not a necessary condition for social order.<sup>28</sup> In showing how the boundaries of public order and public safety are malleable, these theoretical paradigms support existing movements advancing new definitions of public order and public safety that are more responsive to the needs of marginalized and disempowered communities that

---

<sup>20</sup> In that work, I examine how legal scholarship and social science research on policing evaluate connections between masculinity and police violence. I specifically argue that dominant social constructionist accounts of masculinity do not go far enough to challenge the basic structure of police and what police do and explain the promise of postmodern feminist and queer theories to build normative frameworks that achieve those goals. Jordan Blair Woods, *Destabilizing Policing’s Masculinity Project*, 89 GEO. WASH. L. REV. (forthcoming 2021) (manuscript on file with author).

<sup>21</sup> *Infra* Section I.A (defining metanarratives).

<sup>22</sup> *Infra* Part I.

<sup>23</sup> *Id.*

<sup>24</sup> *Infra* Part II.

<sup>25</sup> *Infra* Part I.

<sup>26</sup> *Infra* Section I.D.

<sup>27</sup> *Id.*

<sup>28</sup> *Infra* Section II.A.

those metanarratives ignore.<sup>29</sup> When applied to traffic enforcement, postmodern feminism and queer theory provide a normative grounding for law and policy changes that reconceptualize traffic enforcement in ways that do not rely on police, and that better achieve public order and public safety from the perspective of communities that are currently over-policed and over-criminalized in the traffic space.<sup>30</sup>

### I. ONE-SIZE-FITS-ALL TRAFFIC ENFORCEMENT

Drawing on concepts in postmodern feminism and queer theory, this Part explains the dominance of the one-size-fits-all model of traffic enforcement in the United States. This model vests the primary responsibility of enforcing traffic laws in the hands of police. First, Section A provides greater clarity for how the term metanarrative is used in this Essay. Section B then identifies public order and public safety as metanarratives that sustain and perpetuate this police-reliant, one-size-fits-all model of traffic enforcement. Section C discusses how those metanarratives influence the structure of police institutions as well as police behavior in traffic settings. Section D evaluates how metanarratives of public order and public safety are internalized by individuals and societal institutions in ways that shape our political and social realities, and, in turn, normalize police involvement in traffic enforcement.

#### A. *Defining Metanarratives*

Described by Jean-François Lyotard as “incredulity towards metanarratives,”<sup>31</sup> postmodernism rejects universal truths and explanations for reality across place and time.<sup>32</sup> As Lyotard describes, a core function of metanarratives is that they legitimize specific knowledges and practices.<sup>33</sup> For instance, the Enlightenment debates elevated the scientific method as the only reliable method to discover truth through human reason and progress towards freedom and autonomy.<sup>34</sup> Postmodernists reject this idea<sup>35</sup>

<sup>29</sup> *Infra* Section II.B.

<sup>30</sup> *Id.*

<sup>31</sup> JEAN-FRANÇOIS LYOTARD, *THE POSTMODERN CONDITION: A REPORT ON KNOWLEDGE* xxiv (Geoff Bennington & Brian Massumi trans., Univ. of Minn. Press 1984) (1979).

<sup>32</sup> Edward L. Rubin, *The New Legal Process, The Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393, 1419–20 (1996) (“Lyotard’s *The Postmodern Condition* . . . introduced the term postmodernism and represents perhaps the leading statement of this position.”).

<sup>33</sup> LYOTARD, *supra* note 31, at 27–36 (discussing connections between the function of narratives and the legitimation of knowledge).

<sup>34</sup> MARTIN O’BRIEN & SUE PENNA, *THEORISING WELFARE: ENLIGHTENMENT AND MODERN SOCIETY* 75 (1998) (“Enlightenment philosophy suggests that what occurs in the world is subject to entirely knowable and explainable laws that can be discovered and used in directing the progress of human society and securing human mastery over the natural and social world.”).

<sup>35</sup> STEPHEN R. C. HICKS, *EXPLAINING POSTMODERNISM: SKEPTICISM AND SOCIALISM FROM ROUSSEAU TO FOUCAULT* 14 (2004) (“Postmodernism rejects the Enlightenment project in the most fundamental way possible—by attacking its essential philosophical themes.”).

as well as other metanarratives of modernity that promise universal freedom and universal morality.<sup>36</sup>

Although feminist scholars have identified important tensions between feminism and postmodernism,<sup>37</sup> they have also described similarities between the two movements, especially in terms of challenging the foundations and universal assumptions of modernist thought.<sup>38</sup> Nancy Fraser and Linda Nicholson identify a tendency in some feminist theories to reason in ways that resemble the types of metanarratives that are the focus of critique in postmodernism.<sup>39</sup> As Fraser and Nicholson describe, these feminist metanarratives are not “pure” metanarratives in the postmodern sense that they are “ahistorical normative theories about the transcultural nature of rationality or justice.”<sup>40</sup> Rather, these modes of theorization (what they label as “quasi metanarratives”) “tacitly presuppose some commonly held but unwarranted and essentialist assumptions about the nature of human beings and the conditions for social life.”<sup>41</sup> This interpretation guides how the term metanarratives is used throughout the remainder of this Essay.

#### B. *Public Order and Public Safety Metanarratives*

From the definitional standpoint above, this Section identifies public order and public safety as metanarratives that sustain and perpetuate a police-reliant, one-size-fits-all model of traffic enforcement. A problem with

---

<sup>36</sup> PETER LEONARD, *POSTMODERN WELFARE: RECONSTRUCTING AN EMANCIPATORY PROJECT* 27 (reprt. 2000) (noting that postmodernism rejects metanarratives “of universal freedom, material abundance, security and increased equality”). See also Barbara Ann Atwood, *Flashpoints Under the Indian Child Welfare Act: Toward a New Understanding of State Court Resistance*, 51 EMORY L.J. 587, 596 (2002) (“[M]ost postmodern philosophers are suspicious of classic notions of truth, reason, objectivity, and identity.”); Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617, 619 n.8 (1990) (“Since the Enlightenment, these metanarratives have sought to develop principles of objective science, universal morality, and autonomous art.”).

<sup>37</sup> Nancy Fraser & Linda Nicholson, *Social Criticism Without Philosophy: An Encounter Between Feminism and Postmodernism*, in UNIVERSAL ABANDON? THE POLITICS OF POSTMODERNISM 83, 91–92 (Andrew Ross ed., 1988) (identifying differences between feminism and postmodernism). Fraser and Nicholson have described that postmodernism is ultimately concerned with the status of philosophy, whereas feminism is guided “by the demands of political practice” in eliminating sexism. *Id.* at 91. See also Rhode, *supra* note 36, at 619–20 (identifying tensions between postmodernism and feminism).

<sup>38</sup> Fraser & Nicholson, *supra* note 37, at 91–92 (discussing similarities between feminism and postmodernism); SUSAN J. HEKMAN, *GENDER AND KNOWLEDGE: ELEMENTS OF A POSTMODERN FEMINISM* 1 (1990) (same); Helen Stacy, *Postmodern Feminist Justice: Identity and Reform*, 4 SOC. PATHOLOGY 1, 7 (1998) (“Postmodernism strengthens the feminist critique of law by demonstrating how the binary opposition of law (win/lose, right/wrong, public/private, man/women) work off a concept of individuality that assumes there can be a single understanding of *all* women’s experience.”). Rejecting appeals to universality is also a primary feature of queer theory. See ANNAMARIE JAGOSE, *QUEER THEORY: AN INTRODUCTION* 17 (1996) (“Heterosexuality . . . is equally a construction whose meaning is dependent on changing cultural models. As a descriptive term its provenance is historical, no matter how often it lays claim to universality.”).

<sup>39</sup> Fraser & Nicholson, *supra* note 37, at 92.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

metanarratives is that they provide schemes and explanations that are treated as universal and generalizable in society by means of prioritizing the experiences of privileged groups and subordinating the experiences of marginalized people.<sup>42</sup> In the context of traffic, a large volume of evidence demonstrates that Black and Latinx motorists are disproportionately subjected to and harmed by both pretextual and intrusive policing practices in the traffic space.<sup>43</sup> Those perspectives, however, are ultimately left at the margins and subsumed into universal and generalizable explanations for why public order and public safety demand police presence in the traffic space, regardless of one's race, ethnicity, gender, sexuality, or other position in society.<sup>44</sup>

It is possible to dissect universal and generalizable explanations about the need for public order and public safety in the traffic space along three dimensions. First, driving is central to our society and a major part of everyday life.<sup>45</sup> Masses of people enter motor vehicles every day to get to and from work, shop, and leisure activities.<sup>46</sup> At the same time, anyone in traffic can potentially engage in driving conduct that places themselves, other drivers, and pedestrians at risk of harm.<sup>47</sup> Each year, over one million car accidents result in non-fatal injuries in the United States.<sup>48</sup> Traffic

---

<sup>42</sup> STEVEN CONNOR, *POSTMODERNIST CULTURE: AN INTRODUCTION TO THEORIES OF THE CONTEMPORARY* 30 (1989) (noting that metanarratives “subordinate, organize and account for other narratives; so that every other local narrative . . . is given meaning by the way it echoes and confirms the grand narratives”); Shane Phelan, *(Be)Coming Out: Lesbian Identity and Politics*, 18 *SIGNS* 765, 778 (1993) (“[I]t has been part of the ideological function of the universalized ‘subject’ to remove individuals from their social locations and to present them as equal, autonomous agents, when in fact they are unequal and usually dominated.”).

<sup>43</sup> For authority on the racial and economic injustices of traffic stops, see sources cited *supra* note 18.

<sup>44</sup> Phelan, *supra* note 42, at 784 (“Grand theories work by subsuming all struggles under a single rubric, delaying or denying the importance of other categories.”); *INVESTIGATING SOCIAL PROBLEMS* 98 (A. Javier Treviño ed., 2d ed. 2019) (“The problem with metanarratives is that they inevitably leave some people at the margins or attempt to force their experiences into the grand story being told.”).

<sup>45</sup> Gregory H. Shill, *Should Law Subsidize Driving?*, 95 *N.Y.U. L. REV.* 498, 500 (2020) (“There’s little question that the car is now central to American life.”).

<sup>46</sup> BRIAN MCKENZIE, U.S. DEP’T OF COM., *WHO DRIVES TO WORK? COMMUTING BY AUTOMOBILE IN THE UNITED STATES: 2013*, at 1 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/acs/acs-32.pdf> (“Nationally, the private automobile is the predominant form of transportation for work and other travel purposes.”).

<sup>47</sup> NAT’L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP’T OF TRANSP., *TRAFFIC SAFETY FACTS ANNUAL REPORT TABLES* (2021), <https://cdan.nhtsa.gov/tsftables/National%20Statistics.pdf> (reporting data showing that millions of police-reported motor vehicle traffic crashes resulted in fatalities, injuries, or property-damage each year between 2010 and 2018).

<sup>48</sup> *Id.* (reporting that between 1.5 million and 2.1 million police-reported motor vehicle traffic crashes resulted in injury every year between 2010 and 2018).

accidents are also a leading cause of death in the United States.<sup>49</sup> In 2020 alone, there were an estimated 38,680 motor vehicle traffic fatalities.<sup>50</sup>

Second, traffic is a space where crime occurs. In some circumstances, crimes are connected to the rules of the road. Common examples include driving under the influence, reckless driving, repeated driver's license offenses, or vehicular homicide or manslaughter.<sup>51</sup> In other circumstances, motor vehicles are instrumentalities that facilitate crime.<sup>52</sup> For instance, motor vehicles can transport illegal contraband, including weapons or drugs,<sup>53</sup> or people being kidnapped or trafficked.<sup>54</sup>

Third, traffic is a public space where criminal offenders can be present and potentially apprehended. Consistent with this idea, criminal background and outstanding warrant checks are routine components of routine traffic stops today.<sup>55</sup> Several high-profile offenders, including serial killer Ted Bundy and Oklahoma City bomber Timothy McVeigh, were fortuitously apprehended during traffic stops.<sup>56</sup>

<sup>49</sup> *Road Traffic Injuries and Deaths—A Global Problem*, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 14, 2020), <https://www.cdc.gov/injury/features/global-road-safety/index.html> (“Road traffic crashes are a leading cause of death in the United States for people aged 1–54, and they are the leading cause of nonnatural death for U.S. citizens residing or traveling abroad.”) (footnotes omitted).

<sup>50</sup> NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., U.S. DEP'T OF TRANSP., DOT HS 813 115, EARLY ESTIMATE OF MOTOR VEHICLE TRAFFIC FATALITIES IN 2020, at 1 (2021), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813115>.

<sup>51</sup> See Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 699–700 (2015) [hereinafter Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*] (noting that common examples of traffic offenses that are criminalized as felonies or misdemeanors include “(1) driving under the influence, (2) driving without, with a revoked, or with a suspended, driver's license or vehicle registration, (3) reckless driving, (4) failure to stop at the direction of, or eluding, a police officer, (5) vehicle racing, and (6) excessive speeding (over 30 mph above the speed limit)”) (footnotes omitted).

<sup>52</sup> Donald A. Dripps, *Why Rape Should Be a Federal Crime*, 60 WM. & MARY L. REV. 1685, 1728 (2019) (“Considerable authority treats vehicles as instrumentalities, even when they are not traveling interstate at the time of the crime.”).

<sup>53</sup> MICHAEL D. LYMAN, PRACTICAL DRUG ENFORCEMENT 285 (3d ed. 2007) (“People who transport drugs most often use standard automobiles and vans, ranging from large rental vehicles to beat-up wrecks.”); JOSEPH PETROCELLI & MATTHEW PETROCELLI, ANATOMY OF A MOTOR VEHICLE STOP: ESSENTIALS OF SAFE TRAFFIC ENFORCEMENT xii (2006) (noting that every motor vehicle stop “is an opportunity for an officer to legally stop an individual transporting illegal guns or drugs”).

<sup>54</sup> BRIAN JOHN HEARD, KIDNAPPING AND ABDUCTION: MINIMIZING THE THREAT AND LESSONS IN SURVIVAL 55 (2015) (“The vast majority of kidnappings occur from a vehicle.”); Alicia Wilson, *Using Commercial Driver Licensing Authority to Combat Human Trafficking Related Crimes on America's Highways*, 43 U. MEM. L. REV. 969, 980 n.60 (2013) (“[T]ruck drivers could physically transport labor trafficking victims in their commercial motor vehicles.”).

<sup>55</sup> LaFave, *supra* note 16, at 1845 (“As a part of the ‘routine,’ a criminal-history and outstanding-warrants records check is run on the driver and passengers . . .”).

<sup>56</sup> See Dean Scoville, *Killer Stops*, POLICE MAG. (June 1, 2006), <https://www.policemag.com/339561/killer-stops> (discussing examples of how traffic officers have helped to apprehend high-profile killers in the United States); Richard Simon, *Traffic Stops—Tickets to Surprises*, L.A. TIMES (May 15, 1995, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1995-05-15-me-841-story.html> (“Serial killers Ted Bundy and Randy Kraft were caught during traffic stops.”); see also *United States v. McVeigh*, 153 F.3d 1166, 1178 (10th Cir. 1998) (“Just 77 minutes after the blast, Oklahoma State Trooper Charles Hanger (‘Hanger’) stopped the yellow Mercury driven by McVeigh because the car had no license tags.”).

As the next Section discusses, public order and public safety metanarratives connect to how police structure themselves with regard to traffic as well as police behavior in traffic settings.

### C. *Police Structure and Behavior*

Police involvement in traffic enforcement is a key example of the power of public order and public safety metanarratives.<sup>57</sup> As discussed below, these metanarratives maintain police involvement in the traffic space, influence the organization of police agencies with regard to traffic, and shape police behavior in traffic situations.

To begin, it is easy to assume that police have always had a role in traffic enforcement given our heavy reliance on police to enforce traffic laws. Today, almost all states have highway patrol agencies.<sup>58</sup> In addition, most law enforcement agencies have specialized units or officers dedicated to traffic enforcement.<sup>59</sup>

History, however, suggests otherwise. For instance, the historical work of Professor Sarah Seo demonstrates that police became involved in traffic enforcement a century ago with the rise of the mass production of the automobile.<sup>60</sup> As fast-moving cars became more common, self-regulation of driving conduct was no longer a workable or desirable approach for achieving order and safety in traffic.<sup>61</sup> As Seo explains, public opinion shifted to view bad driving—especially when it resulted in serious injuries—as a threat to general public safety.<sup>62</sup> In response, states expanded their traffic codes.<sup>63</sup> The proliferation of traffic laws rendered anyone who drove a motor

---

<sup>57</sup> Andrew Taylor, *Interpreting Hillsborough*, in *INTERPRETING GOVERNANCE, HIGH POLITICS, AND PUBLIC POLICY: ESSAYS COMMEMORATING INTERPRETING BRITISH GOVERNANCE* 57, 73 (Nick Turnbull ed., 2016) (“Policing is . . . a prime example of the power of metanarrative.”).

<sup>58</sup> Kathleen M. Lenk, Toben F. Nelson, Traci L. Toomey, Rhonda Jones-Webb & Darin J. Erickson, *Sobriety Checkpoint and Open Container Laws in the United States: Associations with Reported Drinking-Driving*, 17 *TRAFFIC INJ. PREVENTION* 782, 783 (2016) (noting that “49 states . . . have a statewide highway patrol agency (Hawaii does not have a statewide agency)”).

<sup>59</sup> JOHN S. DEMPSEY & LINDA S. FORST, *AN INTRODUCTION TO POLICING* 285 (8th ed. 2014) (“[M]ost law enforcement agencies also have traffic units that spend time on traffic education and enforcement.”).

<sup>60</sup> See generally SARAH A. SEO, *POLICING THE OPEN ROAD: HOW CARS TRANSFORMED AMERICAN FREEDOM* (2019).

<sup>61</sup> *Id.* at 26 (“Nineteenth-century self-regulation was unsuited for the sudden influx of thousands of fast-moving cars on the public roads.”).

<sup>62</sup> *Id.* at 33 (“[T]he consensus view among laypeople was that bad driving afflicted the entire motoring population.”); *id.* at 30 (“[M]any traffic violations, especially when they resulted in tragedy, did incite righteous outrage.”).

<sup>63</sup> *Id.* at 26 (“Local governments responded swiftly by enacting laws and more laws. In addition to speed limits and license requirements, new regulations mandated safety equipment, like nonglaring headlights [and] rearview mirrors . . .”).

vehicle a potential lawbreaker and invited increased reliance on police to enforce those laws.<sup>64</sup>

In turn, the structure of police agencies responded to the need for police to achieve order and safety in traffic. Prior to 1900, only a handful of states had state-controlled police agencies.<sup>65</sup> Between the 1900s and the early 1920s, over two dozen states created some type of state-controlled police force, most of which were modeled on Pennsylvania's constabulary system.<sup>66</sup> In the late 1920s, however, critiques of the Pennsylvania constabulary system and increased pressure to regulate motor vehicles led some states to create highway patrols.<sup>67</sup> Between 1929 and 1941, highway patrol agencies expanded considerably.<sup>68</sup> During this period, over a dozen states created new state-controlled police agencies, and several other states modified their police agencies.<sup>69</sup> Most of these reforms followed a highway patrol model and focused on traffic regulation.<sup>70</sup>

As police assumed a much larger role in the traffic space during the second half of the twentieth century, traffic and criminal law enforcement increasingly intertwined.<sup>71</sup> Propelled by increased police militarization starting in the 1960s<sup>72</sup> and the growth of order-maintenance/broken windows styles of policing in the 1980s and 1990s,<sup>73</sup> traffic stops served a much greater purpose than traffic law compliance. Rather, traffic enforcement functioned as a tool for furthering crime-control agendas that

---

<sup>64</sup> *Id.* at 27 (“The proliferation of traffic laws had turned everyone who drove a car into a lawbreaker.”); *id.* at 58 (“When such laws lacked an inherent moral force compelling obedience, and when efforts to endow those laws with a moral obligation to obey proved inadequate, reliance on the police appeared to be the only option left.”).

<sup>65</sup> H. KENNETH BECHTEL, *STATE POLICE IN THE UNITED STATES: A SOCIO-HISTORICAL ANALYSIS* 43 (1995) (discussing that between the 1830s and 1900, “[o]nly four states (Texas, Massachusetts, Delaware, and South Carolina) created state-controlled law enforcement agencies”).

<sup>66</sup> *Id.* at 44 (“Beginning in 1915 and continuing through 1923, twenty-seven states created some type of state police force. The model that many states looked to was the Pennsylvania constabulary system.”).

<sup>67</sup> *Id.* (explaining that “negative aspects” of the Pennsylvania constabulary system in combination with “a need for motor vehicle regulation” led “some states . . . to create highway patrols” after 1923).

<sup>68</sup> *Id.* at 42–43 (discussing the expansion of state highway patrol agencies between 1929 and 1941).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 44 (noting that between 1929 and 1941, “[o]ver 80 percent of the forces created . . . were of the highway patrol type”); Franklin M. Kreml, *The Specialized Traffic Division*, 291 ANNALS AM. ACAD. POL. & SOC. SCI. 63, 64 (1954) (noting the establishment of “specialized police traffic divisions (or bureaus or departments)” “[b]y the late twenties and in increasing numbers in the early thirties”).

<sup>71</sup> SEO, *supra* note 60, at 109 (“As crime became more mobile, traffic and criminal law enforcement began to overlap.”).

<sup>72</sup> See generally RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* (2013) (discussing police militarization in the United States).

<sup>73</sup> See generally BERNARD E. HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* (2001) (discussing broken windows policing).

disproportionately targeted communities of color in the name of public order and public safety.<sup>74</sup>

On highways, traffic stops became, and still serve as, tools for drugs and weapons interdiction.<sup>75</sup> In neighborhoods, traffic stops offered and still provide easy justification for police to stop and search “suspicious” persons for non-traffic crime.<sup>76</sup> Under the guise of public order and public safety, these practices give effect to racialized and class-based officer assumptions about the social positions and assumed criminality of stopped drivers and passengers.<sup>77</sup>

Related to these points, the “warrior mythos” that permeates U.S. police departments perpetrates professional scripts of police officers as warriors on the front lines of a war against crime.<sup>78</sup> This warrior mentality positions police both as defenders of public order and public safety, as well as potential victims of breakdowns in public order and public security.<sup>79</sup> In the traffic context, this tension appears in dominant officer danger narratives that frame traffic stops as highly dangerous, potentially fatal, and never routine.<sup>80</sup> For instance, police academies regularly show officer trainees videos of stopped drivers and passengers using extreme violence against officers “in order to stress that mundane police work can quickly turn into a deadly situation if they become complacent on the scene or hesitate to use force.”<sup>81</sup> Paradoxically, the exact things that officers do to protect their safety during traffic stops (for instance, order drivers and passengers out of vehicles,

---

<sup>74</sup> Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, *supra* note 51, at 736–42 (discussing connections between traffic enforcement, proactive policing strategies, and order-maintenance policing between the 1960s and 1990s).

<sup>75</sup> See generally Gross & Barnes, *supra* note 18, at 660 (discussing the use of traffic stops and racial profiling “to increase the probability of finding large hauls of drugs”).

<sup>76</sup> William J. Stuntz, *Local Policing After the Terror*, 111 YALE L.J. 2137, 2158 (2002) (recognizing the legality of “police officers to use trivial ‘crimes’ like minor traffic violations as an excuse to detain and search people whom they suspect of more serious offenses”).

<sup>77</sup> Carbado, (*E*)*Racing the Fourth Amendment*, *supra* note 18, at 966 (acknowledging “that suspicion is racialized and that this racialization burdens people of color”).

<sup>78</sup> Seth Stoughton, *Law Enforcement’s “Warrior” Problem*, 128 HARV. L. REV. F. 225, 225 (2015) (“Modern policing has so thoroughly assimilated the warrior mythos that, at some law enforcement agencies, it has become a point of professional pride to refer to the ‘police warrior.’”).

<sup>79</sup> Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 638–39 (2016) (“Officers are told—repeatedly and by a variety of sources—that they need to adopt a Warrior mindset because failing to do so can be fatal. The work that officers do is viewed not just as dangerous but as *increasingly* dangerous.”) (footnotes omitted).

<sup>80</sup> John Wills, *Routine Traffic Stops*, OFFICER (June 3, 2013), <https://www.officer.com/on-the-street/body-armor-protection/article/10952972/routine-traffic-stops> (“There is no such thing as a routine traffic stop.”); Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, *supra* note 19, at 637 (“The dominant narrative in policing is that each one of these stops is not just highly dangerous but also potentially fatal.”).

<sup>81</sup> Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, *supra* note 19, at 638. See also Stoughton, *supra* note 78, at 227 (“As early as the first day of the police academy, the dangers officers face are depicted in graphic and heart-wrenching recordings that capture a fallen officer’s last moments.”).

search motorists or vehicles, or use force) can have the opposite effect by encouraging escalation that undermines both officer and civilian safety.<sup>82</sup>

#### D. *Internalization of Metanarratives in Society*

As scholars have described, metanarratives enable structures, rationales, and mindsets through which power is exercised over individuals in society, and marginalized groups in particular.<sup>83</sup> Individuals and societal institutions internalize metanarratives in ways that shape our political and social realities, and reinforce the status of social groups in positions of privilege and power.<sup>84</sup> The social consciousness that emerges from this constitutive process can undercut the political will for reforms that seek to empower marginalized groups and improve their lived experiences.<sup>85</sup>

In the traffic context, civilians and societal institutions internalize metanarratives of public order and public safety in ways that normalize police involvement in the traffic space. Society expects that the police will

---

<sup>82</sup> Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, *supra* note 19, at 694–95 (“[T]he exact things that officers may do to protect their safety—which, critically, the dominant danger narrative suggests that they should do, and which may be perfectly legal and constitutional—may be the exact things that officers should not do.”). *See also* Stoughton, *supra* note 79, at 612 (“In too many communities . . . the principles that have grown out of Warrior policing have proven counterproductive, contributing to a distrustful, adversarial, and sometimes aggressive approach to policing that has undermined good police-community relations and exposed officers and civilians alike to unnecessary risk.”).

<sup>83</sup> LOIS MCNAY, FOUCAULT AND FEMINISM: POWER, GENDER AND THE SELF 68 (1992) (“[G]overnmentality is linked to disciplinary power in so far as it annexes disciplinary techniques in order to achieve its aim of the regulation of populations.”); Cindy Patton, *Tremble, Hetero Swine!*, in FEAR OF A QUEER PLANET: QUEER POLITICS AND SOCIAL THEORY 143, 172 (Michael Warner ed., 1993) (describing “[t]he modern liberal state[’s] . . . overt concern with coordinating and integrating different claims on resources and power” as an “organic notion of governmentality”); Taylor, *supra* note 57, at 73 (“Combined, specific situational narratives and metanarratives create governmentality—the mentalities, rationalities, and techniques—through which power is exercised by and over individuals.”); STEPHEN K. WHITE, POLITICAL THEORY AND POSTMODERNISM 118 (1991) (describing “the totalizing effect of metanarratives of justice, that is, the subordination of plurality and heterogeneity to unity and homogeneity under the regime of some purportedly universal principles of justice”).

<sup>84</sup> Martha Albertson Fineman, *The Sexual Family*, in FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS 45, 46 (Martha Albertson Fineman, Jack E. Jackson & Adam P. Romero eds., 2009) (“Shared beliefs, social and cultural ‘metanarratives,’ shaped in accordance with dominant ideology, influence what is chosen from among competing and contradictory facts and conclusions.”); Robert Justin Lipkin, *Can American Constitutional Law Be Postmodern?*, 42 BUFF. L. REV. 317, 336 (1994) (noting when describing postmodern pragmatism that “[the] force, if not [the] substance” of coherent metanarratives “becomes operative only after culture embraces them”); Steven Seidman, *Introduction to THE POSTMODERN TURN: NEW PERSPECTIVES ON SOCIAL THEORY* 1, 10 (Steven Seidman ed., 1994) (“A guiding assumption of western feminism has been the gendered character of social realities, including knowledge.”).

<sup>85</sup> Martha L.A. Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VA. L. REV. 2181, 2204–05 (1995) (noting that “certain core concepts or ‘meta-narratives’ . . . shape and influence reform”); Carmen Luke, *Feminist Politics in Radical Pedagogy*, in FEMINISMS AND CRITICAL PEDAGOGY 25, 29 (Carmen Luke & Jennifer Gore eds., 2013) (“The ‘great’ Western theoretical secular and non-secular metanarratives have been expressions of and the search for solutions to problems rooted in male experience.”).

be present on roads and highways to maintain order and safety.<sup>86</sup> Government bodies spend billions of dollars each year to support police-initiated traffic enforcement.<sup>87</sup> Moreover, civilians and societal institutions come to expect that police officers will act in ways that preserve public order and public safety in the traffic space.<sup>88</sup> In turn, metanarratives of public order and public safety legitimize police-initiated traffic enforcement and make it impossible to imagine a world in which society does not rely on police to enforce traffic laws.<sup>89</sup>

The law itself is a prime example that illustrates how societal institutions internalize public order and public safety metanarratives in ways that normalize police involvement in traffic enforcement.<sup>90</sup> Lawmaking bodies vest the primary responsibility to enforce traffic laws with police agencies and authorize officers to enforce traffic laws in their respective jurisdictions.<sup>91</sup> Courts underscore the duty of police to enforce traffic laws

<sup>86</sup> BRUCE L. BERG, *POLICING IN MODERN SOCIETY* 4 (1999) (“[M]embers of society expect police officers to . . . maintain traffic laws . . .”); THEODORE H. BLAU, *PSYCHOLOGICAL SERVICES FOR LAW ENFORCEMENT* 30 (1994) (noting that “most citizens expect police officers to enforce traffic laws”). *See, e.g.*, Jeffrey Cook, Letter to the Editor, Letters to the Editor, *Rainier Avenue Traffic: More Police for Safety*, SEATTLE TIMES (Aug. 30, 2018, 4:29 PM), <https://www.seattletimes.com/opinion/letters-to-the-editor/rainier-avenue-traffic-more-police-for-safety/> (“We need police to patrol our streets and pull dangerous drivers over.”).

<sup>87</sup> *See, e.g.*, GABRIEL PETEK, LEGIS. ANALYST’S OFF., *THE 2020–21 BUDGET: TRANSPORTATION* 5 (2020), <https://lao.ca.gov/reports/2020/4149/transportation-021020.pdf> (showing that the Governor’s proposed spending budget for the California Highway Patrol neared \$2.7 billion dollars for 2020–21); KAN. LEGIS. RSCH. DEPT., *KANSAS LEGISLATURE 2020–2021 APPROPRIATIONS REPORT 2-95* (2020), <http://www.kslegresearch.org/KLRD-web/Publications/AppropriationsRevenue/2021AppropriationsRpt.pdf> (showing that the Kansas legislature approved over \$93 million to fund the Kansas Highway Patrol in FY 2020).

<sup>88</sup> *See, e.g.*, Leah Shahum, *Vision Zero, Equity & Law Enforcement*, VISION ZERO NETWORK (July 21, 2016), <https://visionzeronetwork.org/vision-zero-equity-law-enforcement/> (“We need police to be empowered to enforce traffic laws to save lives.”).

<sup>89</sup> Woods, *Traffic Without the Police*, *supra* note 1, at 1476 (“Traffic enforcement and policing are so intertwined [today] . . . that it is difficult to envision a world of traffic without the police.”). *Cf.* Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> (“As a society, we have been so indoctrinated with the idea that we solve problems by policing and caging people that many cannot imagine anything other than prisons and the police as solutions to violence and harm.”); JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 149–50 (Michael Bronski ed., 2011) (“Our capacity to envision and take responsibility for a world without police and prisons has been stifled; it is a world many of us simply cannot imagine.”).

<sup>90</sup> *Cf.* Fineman, *supra* note 85, at 2204 (noting that “certain core concepts or ‘meta-narratives’ . . . predominate and affect law”).

<sup>91</sup> *See, e.g.*, ALASKA STAT. ANN. § 28.35.225 (West 2020) (“All law enforcement officers in this state and employees of the Department of Public Safety designated by that department’s commissioner shall enforce this title and regulations adopted under this title [involving motor vehicles.]”); FLA. STAT. ANN. § 316.640 (West 2020) (vesting authority in officers of various police agencies in the state to enforce traffic laws); OHIO REV. CODE ANN. § 5503.02(A) (West 2020) (“The state highway patrol shall enforce . . . the laws relating to the operation and use of vehicles on the highways . . .”); WIS. STAT. ANN. § 349.02(1) (West 2020) (“It is the duty of the police, sheriff’s and traffic departments of every unit of government and each authorized department of the state to enforce chs. 346 to 348 and 350 [rules of the road and other vehicle regulations.]”).

and defer to those lawmaking bodies when assessing whether and when police officers have authority to enforce particular traffic laws.<sup>92</sup> Moreover, courts frequently emphasize the connection between police-initiated traffic stops and legitimate government interests in traffic safety.<sup>93</sup>

In addition to describing police as defenders of traffic safety, courts also characterize police as potential victims of violence in the traffic space. For instance, the U.S. Supreme Court has accepted and perpetuated officer-danger narratives involving routine traffic stops, emphasizing on several occasions that traffic stops are “especially fraught with danger to police officers.”<sup>94</sup> Over the past few decades, courts have upheld the authority of police officers under the Fourth Amendment to question stopped drivers and passengers, order them out of cars, and conduct various searches and seizures during traffic stops.<sup>95</sup> Deference to law enforcement based on officer safety concerns has played a key role in these decisions.<sup>96</sup>

---

<sup>92</sup> See, e.g., *United States v. Ferguson*, 8 F.3d 385, 392 (6th Cir. 1993) (“[W]e ensure that the courts leave to the legislatures the job of determining what traffic laws police officers are authorized to enforce and when they are authorized to enforce them.”); *United States v. Scopo*, 19 F.3d 777, 784 (2d Cir. 1994) (stressing “that the courts leave to the legislatures the job of determining what traffic laws police officers are authorized to enforce and when they are authorized to enforce them.” (quoting *Ferguson*, 8 F.3d at 392)); *State v. Lopez*, 873 P.2d 1127, 1135 (Utah 1994) (“[P]olice officers are under a duty to enforce the traffic laws.”); *State v. Davis*, 273 So.3d 670, 693 (La. App. 2 Cir. 2019) (“Police officers are authorized to enforce traffic laws governing the operation of vehicles and pedestrians upon all public highways located within the state of Louisiana.”); *State v. Iverson*, 871 N.W.2d 661, 672 (Wis. 2015) (“In sum, the Wisconsin Legislature has explicitly authorized state troopers to conduct traffic stops in order to investigate violations of Wis. Stat. § 287.81 [prohibiting littering] and to arrest violators of the statute under specified conditions.”).

<sup>93</sup> See, e.g., *Maldonado v. Holder*, 763 F.3d 155, 165 (2d Cir. 2014) (“Traffic safety is a valid interest of police . . . .”); *State v. Arreola*, 290 P.3d 983, 990 (Wash. 2012) (“[W]arrantless traffic stops based on a reasonable suspicion of a traffic infraction are allowed *only* because such stops are reasonably necessary to enforce the traffic regulations suspected of being violated, in order to further the governmental interest in traffic safety and the general welfare . . . .”).

<sup>94</sup> See, e.g., *Rodriguez v. United States*, 575 U.S. 348, 356 (2015) (quoting *Arizona v. Johnson*, 555 U.S. 323, 330 (2009) and *Michigan v. Long*, 463 U.S. 1032, 1047 (1983)).

<sup>95</sup> See Lewis R. Katz, “Lonesome Road”: *Driving Without the Fourth Amendment*, 36 SEATTLE U. L. REV. 1413, 1413 (2013) (“Our streets and highways have become a police state where officers have virtually unchecked discretion about which cars to stop for the myriad of traffic offenses contained in state statutes and municipal ordinances, and that discretion is often aimed at minority motorists.”); LaFave, *supra* note 16, at 1905 (“[T]he police have been so relentless in pushing their claimed authority relating to traffic stops to the absolute limits. But it is sad, to say the least, that so many judges have served as ready and willing accomplices in these excesses, thereby treating the Fourth Amendment as largely an irrelevancy in the context of ‘routine traffic stops.’”) (footnotes omitted).

<sup>96</sup> Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, *supra* note 19, at 637–39 (discussing how danger narratives shape Fourth Amendment law on traffic stops). On several occasions, the Court has stressed that officers must be empowered during traffic stops to take “unquestioned command of the situation.” *Johnson*, 555 U.S. at 330 (quoting *Maryland v. Wilson*, 519 U.S. 408, 414 (1997)); see also *Long*, 463 U.S. at 1048 (recognizing the Court’s “view of the danger presented to police officers in ‘traffic stop’ and automobile situations”). For authority on judicial deference to police and perceptions of officer danger, see Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2022–24 (2017) (discussing courts’ deference to law enforcement and police expertise); Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182, 1210 (2017) (noting that “courts defer almost invariably to police officers’ later accounts of their perceptions of danger or resistance”).

\* \* \*

In sum, public order and public safety metanarratives sustain and perpetuate a police-reliant, one-size-fits-all model of traffic enforcement. These metanarratives influence the structure of police agencies as well as police behavior in traffic settings. In addition, these metanarratives are internalized by individuals and societal institutions in ways that normalize police involvement in traffic enforcement.

## II. DESTABILIZING ONE-SIZE-FITS-ALL TRAFFIC ENFORCEMENT

This Part begins a conversation that illustrates how, in distrusting metanarratives and universal truths, postmodern feminist and queer theories offer conceptual tools to move beyond a police-reliant, one-size-fits-all model of traffic enforcement in the United States. Building on the previous analysis, Section A applies these theoretical perspectives to frame police involvement in traffic enforcement as historically contingent and not a necessary condition for social order.<sup>97</sup> Section B then discusses how, in challenging metanarratives, postmodern feminist and queer theories offer conceptual support for existing movements that are advancing competing ideas of public order and public safety that are more responsive to the needs of groups that are over-policed and over-criminalized in the traffic space.<sup>98</sup>

### A. *The Historical Contingency of Police-Initiated Traffic Enforcement*

Viewing police-initiated traffic enforcement through a postmodern feminist and queer theoretical lens challenges the widespread assumption

---

<sup>97</sup> See Jagose, *supra* note 38, at 17 (“It is difficult to think of ‘homosexuality’ not as a self-evidently descriptive term for certain identifications or inclinations but as a historically and culturally contingent category.”); Laura A. Rosenbury, *Postmodern Feminist Legal Theory*, in RESEARCH HANDBOOK ON FEMINIST JURISPRUDENCE 127, 130 (Robin West & Cynthia Grant Bowman eds., 2019) (“Postmodern feminist legal theory . . . seeks to dissect and understand the ways that law and feminism constitute what we posit as reality.”); Kathy Rudy, *Queer Theory and Feminism*, 29 WOMEN’S STUD. 195, 198 (2000) (describing that a tenet of queer theory “is the idea that sexual identities as well as gender itself are historically contingent, socially constructed categories which can and have been assembled differently at different times”).

<sup>98</sup> Rosenbury, *supra* note 97, at 137 (“[P]ostmodern feminist legal theory provides a framework for developing new understandings of gender while simultaneously emphasizing that all feminist law reform is contingent and deeply contextual.”). For other perspectives on police reform that focus on the voices and lived experiences of marginalized groups, see also Anna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 479 (2018) (“Centering the experiences of poor people of color creates disruptions and contradictions. It points to law not as a power of stability, fairness, and neutrality, but of exploitation, dispossession, and the concentration of wealth.”); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2150 (2017) (“The legal estrangement perspective demands taking account of historically rooted group marginalization and the collective consciousness of discrimination and mistreatment.”); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 778 (2021) (discussing “the power lens,” characterized by “new governance arrangements that shift power over policing to those who have been most harmed by mass criminalization and mass incarceration”).

and our constructed reality that achieving public order and public safety on roads and highways is impossible without the police. From this theoretical vantage, police-initiated traffic enforcement is historically contingent, and the faith and responsibility that society place in police to enforce traffic laws is contextual.<sup>99</sup> Rather than embodying universal truths, dominant public order and public safety metanarratives connect to and derive their meaning from deeper histories in the United States of excluding and subordinating marginalized groups.<sup>100</sup>

In the context of traffic, one could extend this perspective to argue that police-initiated traffic enforcement derives meaning from histories of exclusion and subordination. This is illustrated by the ways in which Black, Latinx, and other marginalized people are disproportionately targeted, harmed, and criminalized during police-initiated traffic enforcement.<sup>101</sup> These injustices and inequalities are not haphazard. They embody contemporary means of social control that the state subjects Black, Latinx, and other marginalized people to through the front end of the criminal process where police investigations occur.<sup>102</sup>

To some extent, looking abroad and juxtaposing the United States with New Zealand's previous model of traffic enforcement reveals how the dominant system of police-initiated traffic enforcement in the United States is historically contingent. Between 1936 and 1992, New Zealand created and maintained a non-police governmental agency that was responsible for the bulk of traffic enforcement.<sup>103</sup> Under this alternative model, police were primarily concerned with investigating traffic accidents that resulted in injury and enforcing drunk driving laws.<sup>104</sup>

At the same time, it is important to recognize that New Zealand's previous model of traffic enforcement is not a perfect example. Under this

---

<sup>99</sup> Rosenbury, *supra* note 97, at 137 (“[P]ostmodern feminist legal theory provides a framework for developing new understandings of gender while simultaneously emphasizing that all feminist law reform is contingent and deeply contextual.”); Rudy, *supra* note 97, at 198 (describing that a tenet of queer theory “is the idea that sexual identities as well as gender itself are historically contingent, socially constructed categories which can and have been assembled differently at different times”).

<sup>100</sup> WILLIAM E. MARSH, NOTHINGNESS, METANARRATIVE, AND POSSIBILITY 189 (2009) (“The value of metanarrative . . . lies in its ability to centralize and locate meaning in a given narrative, to contextualize a larger truth in a way that lends meaningfulness to a point or points of historical experience.”).

<sup>101</sup> See sources cited *supra* note 18 (documenting racial and economic injustices involving traffic stops).

<sup>102</sup> Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, *supra* note 51, at 708–09.

<sup>103</sup> DAVID H. BAYLEY, POLICE FOR THE FUTURE 135 (1994); P. R. Wilson & D. Chappell, *The Effects of Police Withdrawal from Traffic Control: A Comparative Study*, 61 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 567, 568 (1970).

<sup>104</sup> Wilson & Chappell, *supra* note 103, at 568. A key difference between the framework proposed in this Essay and New Zealand's approach is that in New Zealand, the police did not lose authority to enforce traffic laws. In practice, however, non-police traffic officers “detected and prosecuted almost all non-moving traffic violations, and the majority of minor moving violations.” *Id.*

model, police were still involved in certain aspects of traffic enforcement (specifically, accident investigations and DUI enforcement), which some advocates argue also invite non-police responses and solutions.<sup>105</sup> Moreover, after almost six decades, New Zealand reverted back to a system of police-initiated traffic enforcement largely due to financial considerations.<sup>106</sup> Nonetheless, the New Zealand model is a useful starting point to show that police-initiated traffic enforcement is historically contingent and that it is possible to drastically reorganize traffic enforcement and achieve public safety and public order on roads and highways without relying on police to enforce the bulk of traffic laws.

### B. *Traffic Enforcement Based on New Understandings of Public Order and Public Safety*

Beyond their descriptive and deconstructive utility, postmodern feminist and queer theories provide normative support for new systems of traffic enforcement that do not rely on the police. Specifically, these theoretical perspectives offer conceptual support for existing movements that are advancing new meanings of public order and public safety which prioritize the pragmatic concerns of marginalized groups that are over-policed and over-criminalized in the traffic space.<sup>107</sup> To be clear, these new understandings are not simply products of replacing one universal notion of public order and public safety with another.<sup>108</sup> Rather, principles in postmodern feminism and

<sup>105</sup> Sean Illing, *The “Abolish the Police” Movement, Explained by 7 Scholars and Activists*, Vox (June 12, 2020, 11:00AM), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> (“We also see that much of what police do could probably be done better or more cost-effectively if done by somebody else: everything from taking accident reports to responding to persons who are homeless or in mental health crisis.”) (quoting Christy Lopez, law professor at Georgetown University); Kea Wilson, *What ‘Abolish the Police’ Could Mean for Street Safety*, STREETS BLOG USA (June 22, 2020), <https://usa.streetsblog.org/2020/06/22/what-abolish-the-police-could-mean-for-street-safety> (“A different, criminalization-free model [of drunk driving] might involve taking traffic stops out of the hands of cops, and putting them in the hands of addiction specialists who are trained in deescalation strategies and equipped with the tools to get problem drinkers meaningful help and a safe ride home.”).

<sup>106</sup> Scholars have described that this reversion was animated by concerns that the non-police traffic agency did not produce any savings for the New Zealand government. Because the non-police traffic agency was primarily staffed by police officers, the government was simply redirecting resources from one public agency to another. BAYLEY, *supra* note 103, at 135; Woods, *Traffic Without the Police*, *supra* note 1, at 1536–37.

<sup>107</sup> Phelan, *supra* note 42, at 766 (arguing “that widespread social . . . change requires interaction with and intervention in . . . the dominant social text”) (internal quotation omitted). This point of view is consistent with what scholars have described as “radical pragmatism” and adopting the perspective of the oppressed. See Daria Roithmayr, “*Easy for You to Say*”: *An Essay on Outsiders, the Usefulness of Reason, and Radical Pragmatism*, 57 U. MIA. L. REV. 939, 947 (2003) (“[R]adical pragmatism finds it more useful to consider the disempowered community separately from the dominant group in order to focus on differing needs, political commitments, and preferred measures of usefulness.”); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1711 (1990) (“[W]e should understand the perspective of the oppressed as making possible an understanding that coherence can be plural.”).

<sup>108</sup> Carlos A. Ball, *Essentialism and Universalism in Gay Rights Philosophy: Liberalism Meets Queer Theory*, 26 LAW & SOC. INQUIRY 271, 273 (2001) (book review) (“The rejection by queer theorists

queer theory help us to recognize these new meanings as historically contingent and grounded on a normative commitment to empower marginalized and over-policed communities in the traffic space.<sup>109</sup>

Postmodern feminist and queer theoretical perspectives also provide conceptual support for the kinds of local politics that are embodied in mobilization efforts to reimagine traffic enforcement without the police.<sup>110</sup> Movements seeking to defund and destabilize the contemporary police order challenge grand narratives of public order and public safety in favor of local solutions to social problems that better serve the needs and experiences of marginalized and disempowered communities.<sup>111</sup> These mobilization efforts confront universalized and flat understandings of public order and public safety in favor of a multiplicity of ideas that help to define what public order and public safety mean from the perspective of disempowered groups in particular contexts (for instance, traffic).<sup>112</sup> This type of local politics not only brings the voices and lived experiences of disempowered and marginalized communities in the traffic space front and center, but also facilitates alliance and coalition building that pushes people to recognize their relative positions of power and subordination in the traffic domain.<sup>113</sup>

---

of sexual identities as natural or given phenomena is accompanied by a rejection of universal or foundationalist moral principles.”); Fraser & Nicholson, *supra* note 37, at 101 (characterizing postmodern-feminist theory as “nonuniversalist”).

<sup>109</sup> Fraser & Nicholson, *supra* note 37, at 101 (noting that postmodern-feminist critiques “would be explicitly historical, attuned to the cultural specificity of different societies and periods and to that of different groups within societies and periods”); NANCY LEVIT & ROBERT R. M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 36 (2d ed. 2016) (“Postmodern feminist legal theorists . . . reject notions of single truths and recognize instead that truths are multiple, provisional, and thus linked to individuals’ lived experiences, perspectives, and positions in the world.”); Phelan, *supra* note 42, at 784 (“Local politics and the theories that sustain them . . . open space for a multiplicity of claims and struggles.”); *id.* at 786 (“The rebellion against the (meta)narratives of the white, male West . . . is not against all knowledge, even all narrative knowledge, but against the great stories of legitimation that have served to blind us to the role of power in common life.”); *see also* Roithmayr, *supra* note 107, at 947 (“[R]adical pragmatism acknowledges that sometimes, maybe even often, something outside reason—be it political and/or ethical commitments of varying sorts, intuitions, passions, experiences, or sentiments—may drive the constructive answer to that question. At other times, and in other circumstances, reason may be useful.”).

<sup>110</sup> As Shane Phelan describes, local politics “is a politics that eschews universal narratives of oppression that base all oppressions on one ‘most basic’ one, that posit the same mechanisms of oppression in all times and places, or that prescribe unitary or homogeneous ideals for all times and places.” Phelan, *supra* note 42, at 783.

<sup>111</sup> Kaba, *supra* note 89 (“We can build other ways of responding to harms in our society. Trained ‘community care workers’ could do mental-health checks if someone needs help. Towns could use restorative-justice models instead of throwing people in prison.”). *See also* Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1825 (2020) (“Abolitionists . . . are making demands and running experiments that decrease the power, footprint, and legitimacy of police while building alternative modes of responding to collective needs and interpersonal harm.”). *Cf.* Phelan, *supra* note 42, at 783 (emphasizing the need to “eliminate the grand narratives in favor of more local strategies”).

<sup>112</sup> Phelan, *supra* note 42, at 766 (stressing that “change is necessarily a local operation, one involving political action at particular locations in our lives independent of global or universal theories”).

<sup>113</sup> *Id.* at 783 (“If we eliminate the grand narratives in favor of more local strategies, we find that our allies are (potentially) everywhere.”); *id.* at 784 (“A local politics . . . also calls us to acknowledge our positions of privilege as well as of oppression.”).

This type of local politics encourages continuous evaluation of what society's normative commitment to marginalized and over-policed communities is in the traffic space and whether that commitment is being achieved.<sup>114</sup>

Proposals to remove police from traffic enforcement as part of comprehensive plans to reimagine public safety within communities fall in line with these ideas. Revisit the City of Berkeley's proposal, which directs the city to create a Department of Transportation staffed by unarmed civil servants who would be in charge of enforcing traffic violations.<sup>115</sup> The city's proposal is explicitly grounded in the reality that the traffic space is fraught with racial bias and inequality and that traffic stops can turn into violent and deadly experiences for stopped people of color, especially unarmed Black drivers and passengers.<sup>116</sup> Placing primacy on the pragmatic concerns of marginalized groups, the proposal is intended "to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs, [and] infrastructure."<sup>117</sup>

#### CONCLUSION

Of course, the descriptive and normative potential for postmodern feminism and queer theory to challenge the contemporary policing order extends well beyond traffic enforcement. This Essay, however, provided a snapshot of how these theoretical perspectives can offer support for existing movements that seek to reimagine public order and public safety in the most common context in which police interact with civilians today—the traffic stop.<sup>118</sup> Postmodern feminism and queer theory provide conceptual tools that illuminate how our current police-reliant, one-size-fits-all model of traffic enforcement in the United States is historically contingent and sustained by public order and public safety metanarratives. In showing how the boundaries of public order and public safety are malleable, these theoretical paradigms provide a normative grounding for law and policy changes that reconceptualize traffic enforcement in ways that do not rely on police, and that better achieve public order and public safety from the perspectives of marginalized communities that are currently over-policed and over-criminalized in the traffic space.

---

<sup>114</sup> *Id.* at 780 ("This means that any a priori ideas about justice, about equality, and about our location in social space must be reexamined, not once but continuously.").

<sup>115</sup> Browning & Cowan, *supra* note 1; Sandler, *supra* note 2.

<sup>116</sup> Memorandum from Councilmembers Rigel Robinson, Lori Droste, & Ben Bartlett, & Mayor Jesse Arreguín, Berkeley City Council to Hon. Mayor and Members of the City Council (July 14, 2020), [https://www.cityofberkeley.info/Clerk/City\\_Council/2020/07\\_Jul/City\\_Council\\_\\_07-14-2020\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/City_Council__07-14-2020_-_Regular_Meeting_Agenda.aspx) (follow "18e."BerkDOT: Reimagining Transportation for a Racially Just Future" hyperlink).

<sup>117</sup> *Id.*

<sup>118</sup> BAUMGARTNER ET AL., *supra* note 17, at 30 ("[T]raffic stops are the most common type of encounter that Americans have with the police . . .").

