

## Chicago-Kent Law Review

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Volume 92  
Issue 2 *Cities in Crisis*

Article 8

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10-30-2017

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### Recommended Citation

Asmara M. Tekle, *Roll On, Cyclist: The Idaho Rule, Traffic Law, and the Quest to Incentivize Urban Cycling*, 92 Chi.-Kent L. Rev. 549 (2017).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol92/iss2/8>

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## ROLL ON, CYCLIST: THE IDAHO RULE, TRAFFIC LAW, AND THE QUEST TO INCENTIVIZE URBAN CYCLING

ASMARA M. TEKLE\*

### I. INTRODUCTION

On urban roadways built for motorists, how best to accommodate the urban cyclist? That intrepid soul who dares to brave the shared space of the road on two wheels, yet all too commonly endures the wrath of those on four. The cyclist may choose to commute by bike because of personal choice, wanting to do her part in battling climate change, or to increase her fitness. As compared to driving, cycling has lower economic cost and can enhance access and opportunity to the benefits of the city for those with less means (or those who choose to spend them elsewhere), such as employment, education, culture, and community. While cycling has increased in recent years and U.S. cities increasingly are installing bike share programs, cycling is still all too rare a mode of transportation.<sup>1</sup>

To date, therefore, the incentives are not yet in place to persuade a critical mass of urban dwellers to consider commuting by cycling. In keeping with segregated cycling theory, one such incentive might be the addition of segregated bike lanes protected from motorists by barriers that may

\* Professor of Law, Texas Southern University, Thurgood Marshall School of Law and occasional urban cyclist. Many thanks to Reem Haikal and Miguel Cazarez for research assistance. The author also is grateful for comments received at the 2017 inaugural Real Property Schmooze at Texas A&M School of Law as well as from Bernadette Atuahene, Carol N. Brown, and Joanne M. Prince at the property law incubator session at the 2016 annual meeting of the Lutie A. Lytle Writing Workshop.

1. ALLIANCE FOR BIKING & WALKING, BICYCLING & WALKING IN THE UNITED STATES: BENCHMARKING REPORT 10 (2016), <http://www.bikewalkalliance.org/resources/benchmarking> (noting that “[t]he percentage of adults biking to work decreased slightly from 1980 (0.5%) to 2000 (0.4%), but has also seen an increase from 2005 (0.4%) to 2013 (0.6%). Commuters in the [the 50 most populous U.S. cities] studied for this report saw a steeper increase during these years, from 0.7% in 2005 to 1.2% in 2013.”). In addition, only 77% of millennials (those born between 1979–95) commutes to work by car, as compared to 92% of generation Xers (those born between 1966–78) and 90% for baby boomers (those born between 1947–65). *Id.* at 13; *see also* FEDERAL HIGHWAY ADMINISTRATION, U.S. DEP’T OF TRANSP., BIKE SHARING IN THE UNITED STATES: STATE OF THE PRACTICE AND GUIDE TO IMPLEMENTATION 10 (2012), [https://www.bikesharing.ch/fileadmin/redaktion/bikesharing/Dokumente/Documents\\_et\\_autres/Bikesha ring\\_in\\_the\\_United\\_States.pdf](https://www.bikesharing.ch/fileadmin/redaktion/bikesharing/Dokumente/Documents_et_autres/Bikesha ring_in_the_United_States.pdf) (noting that since the introduction of the first U.S. municipal bike sharing program in 2008 in Washington, D.C., bike share programs have grown substantially, with 20 established programs as of 2012 and more than 20 others in the “active planning” stage). Since 2012, these programs have continued to mushroom. *See Bike Share Program in the U.S.*, [http://www.pedbikeinfo.org/pdf/Programs\\_Promote\\_BikeSharePrograms\\_062116.pdf](http://www.pedbikeinfo.org/pdf/Programs_Promote_BikeSharePrograms_062116.pdf).

make cyclists feel safe.<sup>2</sup> Another incentive might be rolling back the prohibition on cyclists to treat stop signs as yield signs and explicitly distinguishing cyclists from motorists in this respect.

An expressive theory of law suggests that decriminalizing the all-too-common cycling convention of rolling through stop signs, instead of coming to a full stop, might help to change the legal norm expected of cyclists at stop signs.<sup>3</sup> The effect may be to place cyclists on the right side of the law and help motorists and cyclists alike to view cyclists as equally deserving of the road and not as “scofflaws” who flout the law, a perception that haunts urban cyclists.<sup>4</sup> Relative to costlier economic investments in bike infrastructure and road design, decriminalizing cyclists’ rolling stops is a cheaper way to incentivize urban cycling. A formal legal endorsement, indeed subsidy, of cyclists’ common behavior at stop signs may encourage others to use cycling as a mode of urban transportation by helping to change the legal cycling norm and the stigma and shame that cyclists face when engaging this behavior. Moreover, decriminalizing this common act makes it easier, at a sheer physical level, for cyclists to ride.

One jurisdiction—Idaho—has been a pioneer in decriminalizing rolling stops with little to no concomitant negative effect on public safety.<sup>5</sup> In the cycling community, Idaho is known as much for potatoes as the Idaho Stop rule.<sup>6</sup> This statutory rule permits cyclists to treat stop signs as yield signs and to use their discretion to roll through stop signs consistent with the demands of due care and yielding the right-of-way at intersections when necessary.<sup>7</sup> The rule, therefore, provides the cyclist with autonomy.

2. See discussion *infra* Section III.C.

3. See discussion *infra* Section III.C.

4. See *infra* Sections II.B.1. and III.A.1.

5. See *infra* text surrounding notes 46–57. Further study is required to demonstrate whether these same effects would hold true in higher-density environments. In addition, there is no empirical evidence to prove that an Idaho Stop rule would on its own cause an increase in bike ridership. As a whole, the Idaho Stop rule suffers from a lack of empirical study, something that this “thought” piece seeks to reverse.

6. Michael Cabanatuan, *Cyclists’ Idaho Stop Becomes Hot Potato in San Francisco*, S.F. CHRON., (Oct. 5, 2015), <http://www.sfchronicle.com/bayarea/article/Cyclists-Idaho-stop-becomes-hot-potato-in-San-6552279.php>.

7. Idaho Code Ann. § 49-720 (West, Westlaw through 2016 Second Regular Sess. of 63rd Idaho Legis.) (“A person operating a bicycle or human-powered vehicle approaching a stop sign shall slow down and, if required for safety, stop before entering the intersection. After slowing to a reasonable speed or stopping, the person shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the person is moving across or within the intersection or junction of highways, except that a person after slowing to a reasonable speed and yielding the right-of-way if required, may cautiously make a turn or proceed through the intersection without stopping.”). The Idaho Code also articulates the standard of care. Idaho Code Ann. § 49-714 (West, Westlaw through 2016 Second Regular Sess. of 63rd Idaho Legis.) (“Every operator or rider of a bicycle or human-powered vehicle shall exercise due care.”). While the Idaho

For instance, if there already is a pedestrian, vehicle, or other cyclist at the stop sign, the cyclist is expected to use her discretion and yield the right of way.<sup>8</sup> In contrast, if she is alone, the cyclist may “slowly proceed.”<sup>9</sup> In most other respects,<sup>10</sup> the cyclist is expected to conform to the rules of the road as any other person operating a vehicle.<sup>11</sup>

Apart from a few local jurisdictions in Colorado,<sup>12</sup> Idaho is the only state in the Union to have such a rule. In 1982, Idaho was prompted to promulgate this law by magistrates fed up with the clogging of the courts by cyclists cited by law enforcement for misdemeanor criminal offenses.<sup>13</sup> The cyclists’ sin? Rolling through stop signs, something which the magistrates felt was a mere “technical violation[,]” unmeritorious of a citation, and behavior both “functional” and “common” for cyclists.<sup>14</sup> In contrast, rolling through stop signs is far different from “blowing” through them.<sup>15</sup> The former demands caution and attention to self-preservation of the cyclist,<sup>16</sup> and the latter invites recklessness.

Statutes and at least 13 other jurisdictions also permit cyclists to treat red light traffic signals as stop signs (stopping first at them and then proceeding if there are no pedestrians, other cyclists, or motorists with the right of way), this so-called “dead red” law is beyond the scope of this paper. Joseph Stromberg, *Why Cyclists Should be Able to Roll Through Stop Signs and Ride Through Red Lights*, VOX (May 9, 2014), <http://www.vox.com/2014/5/9/5691098/why-cyclists-should-be-able-to-roll-through-stop-signs-and-ride>.

8. *Id.*

9. *Id.*

10. *Id.*; see tit. 49, § 720(2) (allowing for cyclists to ride through a red light after stopping and yielding to others at the intersection). In addition, a cyclist may make a right-hand turn at a red light traffic signal “after slowing to a reasonable speed and yielding the right-of-way” and a left-hand turn onto a one-way highway at a red light “after stopping and yielding to other traffic.” *Id.*

11. Stromberg, *supra* note 7; tit. 49, § 714(1) (“Every person operating a vehicle propelled by human power or riding a bicycle shall have all of the rights and all of the duties applicable to the driver of any other vehicle under the provisions of chapters 6 and 8 of this title, except as otherwise provided in this chapter and except as to those provisions which by their nature can have no application.”).

12. ASPEN, COLO., MUNICIPAL CODE art. XXIV, §§ 04.010–020 (2016); DILLON, COLO., MUNICIPAL CODE ch. 8, art. V, § 8-5-20 (2016); SUMMIT, COLO., MUNICIPAL CODE art. 9, § 5, (2012) (Summit County Traffic Code); BRECKENRIDGE, COLO., MUNICIPAL CODE art. 7, ch. 1, § 1412, cl. 12(a) (2010).

13. Rick Benardi, *Origins of Idaho’s “Stop as Yield” Law*, BICYCLE LAW (Mar. 7, 2009), <http://www.bicyclelaw.com/blog/index.cfm/2009/3/7/Origins-of-Idahos-Stop-as-Yield-Law#more> (discussing the origins of the Idaho Stop rule and noting that “Magistrates considered these technical violations to be functional and common cycling behavior, but under the law, they had no option but to fine cyclists for these violations. Bianchi and the magistrates who were bringing these concerns to him felt that these ‘technical violations’ were unnecessarily cluttering the courts.”).

14. *Id.*

15. Stromberg, *supra* note 7.

16. Cabanatuan, *supra* note 6 (quoting Cynthia Gibson, executive director of the Idaho Walk Bike Alliance).

Scant attention has been paid to this topic in legal academic literature.<sup>17</sup> This paper will look to the world of social norms, as well as two competing and dominant theories of cycling (vehicular (integrated) and segregated theories), to shed light on why so few jurisdictions have followed Idaho's lead and used this low-cost, seemingly pedestrian aspect of traffic law to incentivize cycling as a mode of transportation.

## II. BACKGROUND ON THE IDAHO STOP RULE

### *A. Common Practice—"Everybody Does It"*

Rolling through stop signs is a way for many cyclists to negotiate the shared space of the street. One advocate for an Idaho rule-type law in San Francisco stated that the majority rule prohibiting these rolling stops "effectively criminalizes the way that people naturally negotiate stop sign intersections on a bike: by slowing, checking for traffic, and being prepared to yield to others. Try the experiment a million times, and you'll get the same results: everyone, including SF police officers (and probably the lawmakers themselves), will negotiate this way."<sup>18</sup> Other cyclists, while advocating adherence to status quo and majority rule, admit that they have run their "fair share of stop signs" in the normal course of cycling.<sup>19</sup> Still others outright admit that "[o]n a bicycle, it's acceptable to run a stop sign."<sup>20</sup> Joseph Stromberg of Vox states that "[i]f you've looked around a city lately, you might've noticed that many cyclists don't obey some traffic laws. They roll through stop signs, instead of coming to a complete stop, and brazenly ride through red lights if there aren't any cars coming."<sup>21</sup>

17. See, e.g., Ken McLeod, *Bicycle Laws in the United States: Past, Present, and Future*, 42 *FORDHAM URB. L. J.* 869, 913 (2015); Christopher Waters, *The Rebirth of Bicycling Laws*, 91 *CAN. BAR REV.* 395, 412–13 (2012); Ryan Seher, *I Want to Ride My Bicycle: Why and How Cities Plan for Bicycle Infrastructure*, 59 *BUFF. L. REV.* 585, 607 (2011).

18. Aaron Bialick, *Bikes are Not Cars: Why California Needs an 'Idaho Stop' Law*, *STREETS BLOG SF* (July 20, 2012), <http://sf.streetsblog.org/2012/07/20/bikes-are-not-cars-why-california-needs-an-idaho-stop-law>.

19. C-Gir, *Eugene Police Plan 'Focused Enforcement Operation' Downtown, WBE Provides a Legal Cycling Tutorial*, *WE BIKE EUGENE* (Mar. 29, 2010), <http://www.webikeeugene.org/2010/03/29/eugene-police-plan-focused-enforcement-operation-downtown-wbe-provides-a-legal-cycling-tutorial>.

20. Richard Chang, *Davis Adopts New Bicycle Fines after Public Backlash*, *SACRAMENTO BEE* (Oct. 14, 2013), <http://www.sacbee.com/community/yolo/article2579783.html>.

21. Stromberg, *supra* note 7.

## B. Advantages

### 1. The “Scofflaw Biker” Stereotype and Basic Physics

Is this just a matter of cyclists’ leaning into the urban stereotype of the “scofflaw biker,” or is there something larger at work? Already, urban cyclists enjoy a counter-cultural reputation, described in some quarters as “over-zealous, ‘eco-warriors,’ ‘bike nuts,’ and even a ‘waste of space.’”<sup>22</sup> The “scofflaw biker” is one who rebels against the rules of the road and flaunts his rebellion, irritating pedestrians and most especially, drivers, with his defiance and attitude of insouciance.<sup>23</sup> These bikers scoff at traffic laws and are embodied in the stereotype of a New York City bike messenger, “a professional risk-taker who laughs at traffic law and the suckers who obey them.”<sup>24</sup>

Cyclists, however, have good reason to scoff at the law and risk citation when it comes to rolling through stop signs. One reason is physics. Propelled by human power, it is far more energy efficient for a cyclist to slow down rather than stop at a stop sign. The average cycling commuter “is unlikely to produce more than 100 watts of propulsion power [without sweating profusely], or about what it takes to power a reading lamp.”<sup>25</sup> One hundred watts of power translates into approximately 12.5 miles per hour.<sup>26</sup> In comparison, a 150-horsepower car engine generates 100,000 watts of power.<sup>27</sup>

This disparity in power demands that cyclists conserve energy as much as possible.<sup>28</sup> When stopping at a stop sign, a cyclist must do two things simultaneously: (1) accelerate in order to regain her former speed and (2) “pedal hard to get the bike moving forward fast enough to avoid

22. Daniel Piatkowski et al., *Bicycle Backlash: A Qualitative Examination of Aggressive Driver-Cyclist Interactions 4* (Aug. 1, 2016) (unpublished report) (accepted for presentation at the 96<sup>th</sup> Annual Meeting of the Transportation Research Board in Washington, D.C. on Jan. 8–12, 2017) (on file with authors); Tom Babin, Op-Ed, *The Philosophy that Has Pitted Cars Against Cyclists for the Last 40 Years is Finally Dying*, L.A. TIMES (July 12, 2016), <http://www.latimes.com/opinion/livable-city/la-oe-babin-protected-bike-lane-20160712-snap-story.html> (“Not only did Forester’s theory put cyclists in harm’s way, it generated anger among motorists and taught them to see bikes as nuisances. This enmity, in turn, arguably hamstrung local governments’ efforts to build more and safer infrastructure.”).

23. Emily Badger, *Let’s Talk Seriously About Why Cyclists Break Traffic Laws*, WASH. POST (Jan. 9, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/01/09/lets-talk-seriously-about-why-cyclists-break-traffic-laws>. See also Sunstein, *infra* note 87.

24. Badger, *supra* note 23.

25. Joel Fajans & Melanie Curry, *Why Bicyclists Hate Stop Signs*, ACCESS MAG., Spring 2001, at 28, 29.

26. *Id.*

27. *Id.*

28. *Id.*

falling down.”<sup>29</sup> If a 150-pound rider, therefore, wishes to sustain a speed of 12.5 miles per hour while still coming to a full stop on a street with stop signs every 300 feet, then she will need to generate almost 500 watts of power (or five times more than what is possible for the average commuter), something that is “well beyond the ability of all but the most fit cyclists.”<sup>30</sup> From the perspective of energy expenditure, it costs a cyclist 25% less energy to return to a speed of 10 miles per hour after rolling through a stop sign at five miles per hour rather than coming to a complete stop.<sup>31</sup> Stop-start cycling, therefore, is taxing on the body.<sup>32</sup>

## 2. Safety

The value of stop signs is that they decrease the number of motorists on streets and slow down those who remain, particularly on collector roads located in neighborhood streets or residential areas.<sup>33</sup> They arguably also deter cycling as a mode of transportation when cyclists are forced to expend so much more energy in defiance of basic body mechanics.<sup>34</sup> In lieu of traveling on these ostensibly safer residential streets, therefore, some cyclists ironically may prefer to travel on higher-traffic arterial roads (roads with anywhere from four to ten lanes of traffic at speeds of 30–50 miles per hour). These roads ordinarily have less stop signs and enable more efficient travel from the cyclist’s perspective.<sup>35</sup> These roads, however, are the deadliest for cyclists.<sup>36</sup>

One way to resolve this dilemma is to remove stop signs from residential streets and collector roads. This solution is unlikely, given that stop signs on these streets help to slow down traffic by motorists.<sup>37</sup> Instead of eliminating stop signs, however, another solution is to follow Idaho’s lead

29. *Id.*

30. *Id.*

31. *Id.* at 31.

32. There is a similar argument that motor vehicles should not have to stop at stop signs because stop-start driving arguably is taxing on the environment. See Kim Nursall, *Stop the Stopping: a Big Idea to Get Rid of Unwarranted Stop Signs*, TORONTO STAR (July 7, 2014), [https://www.thestar.com/news/gta/2014/07/07/stop\\_the\\_stopping\\_a\\_big\\_idea\\_to\\_get\\_rid\\_of\\_unwarranted\\_stop\\_signs.html](https://www.thestar.com/news/gta/2014/07/07/stop_the_stopping_a_big_idea_to_get_rid_of_unwarranted_stop_signs.html). When motor vehicles are stopped at stop signs, their engines idle. This argument is beyond the scope of this paper. See *id.*

33. Fajnas & Curry, *supra* note 25, at 29.

34. *Id.* at 31.

35. Stromberg, *supra* note 7.

36. KEN MCLEOD & LIZ MURPHY, LEAGUE OF AM. BICYCLISTS, EVERY BICYCLIST COUNTS – BICYCLIST SAFETY MUST BE A PRIORITY 6, 10 (2014), [http://bikeleague.org/sites/default/files/EBC\\_report\\_final.pdf](http://bikeleague.org/sites/default/files/EBC_report_final.pdf) (stating that most bicyclist fatalities—44%—occur on urban arterial roads).

37. Fajnas & Curry, *supra* note 25.

and permit cyclists greater autonomy to roll through them.<sup>38</sup> This way, cyclists would have greater incentive to use these safer streets instead of those on which they are more likely to be killed or seriously injured.<sup>39</sup>

Moreover, Stromberg argues that it is not uncommon for cyclists and motorists to engage in an “awkward dance” at four-way stop signs.<sup>40</sup> Despite the law’s seeming clarity that the first vehicle to arrive at a stop sign has the right of way, anyone who has ever cycled on collector streets with stop signs knows that in practice different outcomes sometimes happen at stop signs.<sup>41</sup> Out of an abundance of caution, there are times where motorists will yield the right of way to cyclists even if they are first to the stop sign.<sup>42</sup> Other times, the cyclist, exercising an abundance of caution will wait, forcing the driver to wait, resulting in each waiting there “urging the other to go on.”<sup>43</sup> Still other times, “both people assume the other will wait, leading to a totally unnecessary accident,”<sup>44</sup> placing in peril the more vulnerable cyclist. Stromberg argues that the Idaho rule would enhance certainty on the road, providing a rule that cyclists actually could follow and eliminating these awkward interactions at stop signs.<sup>45</sup> Cyclists would follow the rule that the first vehicle at the stop sign goes first.

In Idaho, the apparent effect of the Idaho Stop legislation has been neutral to good. In areas with high-density and that “are more congested,” the law’s effect is neutral because “heavier cross-traffic volumes” require that cyclists stop at stop signs.<sup>46</sup> In areas with lower traffic volumes, in contrast, the law’s result is more positive.<sup>47</sup> According to Brian Shea of the Idaho Transportation Department, the “general consensus” among stakeholders such as “transportation officials, [urban] planning staffs, law enforcement, [and] bicycle advocacy groups . . . is that the law has helped to facilitate the ease and convenience of cycling without causing any risks to

38. Stromberg, *supra* note 7.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. E-mail from Brian M. Shea, Senior Transp. Planner, Planning Servs, Div. of Eng’g Servs, Idaho Transp. Dep’t, to Asmara Tekle, Professor of Law, Tex. Southern Univ., Thurgood Marshall Sch. of Law (Aug. 31, 2016, 9:52 a.m.) (on file with author).

47. *Id.*



cyclists or increasing the number of crashes.”<sup>48</sup> Consequently, there is little thought of repealing the law in Idaho.<sup>49</sup>

Shea further notes that between 1997 and 2014, 2%, or 5,910, motor vehicle accidents also involved bicyclists in Idaho.<sup>50</sup> Of these accidents, “27% had a contributing circumstance attributed to the bicyclists for failing to yield the right of way, failing to obey a stop sign or failing to obey a traffic signal.”<sup>51</sup> Shea also notes that recent evidence suggests that the biggest contributor to motor vehicle accidents involving bicyclists in urban areas appears to be cyclists who bike on sidewalks and who are involved in a crash with a motor vehicle driver who is exiting or entering a driveway.<sup>52</sup>

Bicyclist fatalities arguably provide another way to measure the Idaho Stop rule’s implications for safety. Though not the lowest, the fatalities in Idaho fall squarely at the bottom and under the national average.<sup>53</sup> For instance, as compared to the national average of 2.2% of traffic fatalities who were cyclists in 2014, Idaho experienced a fatality rate of cyclists involved in traffic accidents of 1.1%, the 12th lowest rate in the nation and equal to the rates in the four other jurisdictions of Alabama, Maryland, North Dakota, and Ohio.<sup>54</sup> Furthermore, Idaho in 2014 experienced a cyclist fatality rate of 1.22 per million population—as compared to 2.28 for the nation—placing it twelfth from the bottom in these rates.<sup>55</sup> While the study did not examine causation for fatality rates of cyclists, that Idaho is not higher than the national average and ranks at the bottom on this measure, suggests that the Idaho Stop rule is not inherently unsafe.

At least one small study that compared the severity of bicycle crashes in Boise, Idaho, where the Idaho Stop rule applies, and Champaign/Urbana, Illinois, a jurisdiction that does not allow cyclists to yield at stop signs, found no difference in safety at intersections with stop signs.<sup>56</sup> Yet another

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* See also *The Risks of Riding Right, YAY BIKES!* (May 1, 2015), <http://www.yaybikes.com/blog/2015/05/the-risks-of-riding-right> (video produced by Ohio Department of Transportation, which also appears on the Idaho Transportation Department’s website, that educates cyclists about the potential for crashes with motor vehicles entering and exiting driveways).

53. U.S. DEP’T OF TRANSP., DOT HS 812 261, *TRAFFIC SAFETY FACTS 2014 170–71* (May 2016) (showing States with lower rates of pedalcyclist fatalities in 2014 included Rhode Island and Vermont of 0%, Tennessee at .5%, Kentucky and Oklahoma of .6%, Missouri and West Virginia with .7%, Wisconsin .8%, Nebraska .9%, Mississippi and Montana 1.0%).

54. *Id.*

55. *Id.*

56. Brandon Whyte, *The Idaho Stop Law and the Severity of Bicycle Crashes, A Comparative Study* 14 (2013), <http://brandonwhyte.businesscatalyst.com/assets/mastersprojectbrandonwhyteprintquality.pdf> (un-

small, unpublished study comparing bicyclist injury rates in Boise, Idaho, and Sacramento and Bakersfield, California (two jurisdictions that adhere to the majority rule), and using 2000 US census data, purports to show that Boise was “30.4-60.6% safer than Sacramento” and “150%-252% safer than Bakersfield.”<sup>57</sup> What these studies therefore suggest is that the Idaho Stop Rule actually may enhance biker safety. However, because these studies are small, unpublished, and do not encompass cities of higher-density, further investigation is warranted to assess safety of cyclists and the impact on crashes.

### 3. Reaction to a Lack of Bike Infrastructure

Marshall and Piatkowski theorize that illegally rolling through stop signs, in contravention of the majority rule, is an act of biker self-defense on streets designed for motorists.<sup>58</sup> It is a reaction to a lack of bike infrastructure, such as protected bike lanes, dedicated signals, or signals timed to bikes instead of motor vehicles, that would enable cyclists and motor vehicles to share space safely “on their way to the same places,”<sup>59</sup> in a road world built for motorists. In a nation where bike infrastructure is largely sorely lacking, given that only 1.6% of the federal transportation budget is spent on cycling and walking,<sup>60</sup> this view seems warranted.

Accordingly, this seemingly scofflaw behavior not only is more efficient, but also intuitively feels safer to cyclists because they don’t have to stop their momentum and pedal hard to avoid falling down after coming to a full stop at an intersection.<sup>61</sup> Data appear to show that intersections, as opposed to mid-block, can be deadly for cyclists.<sup>62</sup> Keeping the momentum through rolling stops enables cyclists to *feel* safer by “get[ting] out ahead of

published Master’s project, University of Illinois at Chicago) (finding a statistically significant difference in bicycle crash severity at intersections controlled by traffic signals, “the 60 percent frequency of Type B crashes and 21.4 percent of type C in Champaign/Urbana is very different than the more balanced 44 percent and 40 percent found in Boise.”).

57. Jason N. Meggs, *Bicycle Safety and Choice: Compounded Public CoBenefits of the Idaho Law Relaxing Stop Requirements for Cycling* 5 (2010), <https://meggsreport.files.wordpress.com/2011/09/idaho-law-jasonmeggs-2010version.pdf> (unpublished report).

58. Piatkowski et al., *supra* note 22, at 4; *see also* Seher, *supra* note 17, at 590–91.

59. Badger, *supra* note 23.

60. Piatkowski et al., *supra* note 22, at 4.

61. *Id.*

62. Whyte, *supra* note 56, at 5 (“Of note, intersections were deemed to be the most likely instance for crashes to occur (2009). This was also found to be the case in the work done by Hunter et al. (Klop and Khattak 1999), when 3,000 bicycle crashes spanning six states were analyzed. Approximately three-fourths of all crashes occurred at intersections, with 18 percent of all crashes being fatal.”).

traffic [rather than fighting] for space on a road with no bike lane,”<sup>63</sup> just as when cyclists go through red lights before they turn green.

### C. Disadvantages

So, if the preliminary research shows that the Idaho Stop rule’s advantages outweigh its costs, why haven’t more jurisdictions adopted it? Even more telling, why haven’t mainstream cycling organizations lobbied for its passage, as they do other traffic laws that constitute the greater universe of bike law? For instance, neither the League of American Bicyclists nor the Alliance for Biking and Walking has endorsed this admittedly minority rule.<sup>64</sup> The League of American Bicyclists also takes no position on the Idaho Rule.<sup>65</sup> Instead, the model laws for which the League of American Bicyclists advocates omit an Idaho Stop rule.<sup>66</sup> The Alliance for Biking and Walking includes no mention of the Idaho Stop rule in its reference to bike/ped-friendly legislation, preferring to mention laws such as vulnerable user laws that increase penalties for injury to cyclists and pedestrians, three-foot safe passage laws, and laws that treat bicycles as vehicles, giving cyclists the same rights to the road, but also the same responsibilities.<sup>67</sup>

Furthermore, more than a few jurisdictions with bike-friendly reputations have rejected Idaho-style legislation in recent years. These cities include San Francisco, New York City, and Washington, D.C., as well as states such as Oregon,<sup>68</sup> Utah, Minnesota, Montana, and Arizona.<sup>69</sup> For instance, in late 2015, San Francisco’s mayor vetoed Idaho-influenced legislation, stating that it “created potential conflicts,” instead of enhancing “public safety.”<sup>70</sup> In 2016, Washington, D.C.’s proposed Idaho-style law also failed to clear City Council, seemingly in part related to the belief of

63. Badger, *supra* note 23.

64. See *infra* notes 67–69.

65. *Bike Law University*, LEAGUE OF AM. BICYCLISTS, <http://bikeleague.org/content/bike-law-university> (last visited Oct. 11, 2016).

66. *Model Legislation*, LEAGUE OF AM. BICYCLISTS, <http://bikeleague.org/content/model-legislation-0> (last visited Oct. 11, 2016) (including model legislation for a vulnerable user law, safe passage law, and where to ride law).

67. ALLIANCE FOR BIKING & WALKING, *supra* note 1, at 124.

68. Jonathan Maus, *Did Firing of Karl Rohde Hurt the Idaho Stop Bill?*, BIKEPORTLAND.ORG (Apr. 22, 2009, 4:07 PM), <http://bikeportland.org/2009/04/22/did-firing-of-karl-rohde-hurt-the-idaho-stop-bill-17569>. Oregon’s proposed law failed to clear committee, seemingly in part because the chief lobbyist advocating the bill was fired contemporaneously.

69. Cabanatuan, *supra* note 6.

70. Emily Green, *S.F. Mayor Lee Vetoes Proposed Rolling-stop Law for Bicyclists*, S.F. CHRON. (Jan. 19, 2016), <http://www.sfchronicle.com/bayarea/article/Lee-vetoes-S-F-s-proposed-rolling-stop-law-for-6770462.php>.

the police department that all vehicles on the road should be subject to the same rules.<sup>71</sup>

In New York City, a council member introduced a non-binding resolution for a change in New York state law that would permit the Idaho stop rule in New York City and in the state; however, this resolution has not cleared committee since its introduction and referral to the committee in November 2015.<sup>72</sup> Reaction to this resolution mirrors the reaction to Idaho-style rules in other cities. A source from New York City's City Hall stated, "[the] resolution doesn't speak to bicycle safety." In addition, the president of a group that advocates on behalf of transit riders and pedestrians remarked that rolling stops for cyclists would be dangerous to pedestrians (particularly in a city as dense as New York City) and admitted that cyclists already treat stop signs as yield signs, but that "legitimizing that behavior would be a huge mistake."<sup>73</sup>

Others argue that Idaho-style rules infringe on the rights of pedestrians who too often are immobilized like deer-in-the-headlights by a cyclist who has failed to yield to them at an intersection.<sup>74</sup> In this line of argument, those walking on two feet, as the "lifeblood of the city," should have priority over those riding on two wheels.<sup>75</sup> If a cyclist and a pedestrian are both at an intersection, and the cyclist has arrived first, then an Idaho stop rule would give the cyclist the right of way. The effect would be to force the pedestrian "to wait at the corner until the bike passes, possibly running out of time to cross," creating a "maddash," and imposing a heavier burden on populations who face physical challenges at intersections, such as the elderly.<sup>76</sup> Under Idaho-style legal regimes, dissenters argue that cyclists would be emboldened to take even more liberties with the law than they already are doing by not stopping at stop signs.<sup>77</sup> It also would be hard to enforce

71. *Bicycle and Pedestrian Safety Act Passes without Idaho Stop*, WASHCYCLE (June 8, 2016), <http://www.thewashcycle.com/2016/06/bicycle-and-pedestrian-safety-act-passes-without-idaho-stop.html>.

72. N.Y. CITY COUNCIL, LEGISLATIVE RESEARCH CTR., <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2523134&GUID=E0B32FA4-C25A-4D70-A553-FECECD520AF2&Options=ID|Text|&Search> (last visited Oct. 13, 2016).

73. Danielle Furfaro, *Proposed Bill Allows Bikers to Blow Through Stop Signs*, N.Y. POST (Nov. 24, 2015, 12:08 AM), <http://nypost.com/2015/11/24/proposed-bill-allows-bikers-to-blow-through-red-lights>.

74. Ben Adler, *Why Bikers Should Live by the Same Rules as Everyone Else*, GRIST.ORG (May 22, 2014), <http://grist.org/cities/why-bikers-should-live-by-the-same-laws-as-everyone-else>.

75. *Id.*

76. *Id.*

77. *Id.*

the rule and create confusion about who had the right of way before a cyclist rolled through a stop sign.<sup>78</sup>

### III. TWO COMPETING THEORIES OF CYCLING: VEHICULAR (INTEGRATED) AND SEGREGATED CYCLING

#### A. *Vehicular Cycling*—“*Same Rights, Same Road, Same Rules*”

In the absence of evidence supporting the majority rule or countering the minority Idaho rule, one argument rooted in vehicular, or integrated, cycling theory appears to persist.<sup>79</sup> Vehicular cycling, also called “bicycle driving,” treats bicycles as vehicles, like any other vehicle on the road. Because each vehicle uses the same road, each has the same rights, and must abide by the same rules, resulting in the oft-repeated saying in the literature—*same rights, same road, same rules*.<sup>80</sup>

Vehicular cycling appears to be the dominant framework for thinking about cycling in the U.S. normative context, and arguably stems from the widespread adoption of the Uniform Vehicle Code in 1926. The code in 1926 appeared to define bicycles as vehicles, subsequently excluding them from the definition in 1930, and then resurrecting their inclusion in 1975.<sup>81</sup> Influenced by the 1930 iteration of the Code, “the vast majority” of state jurisdictions provides cyclists “the rights and duties of operators of other vehicles.”<sup>82</sup>

Even prior to the widespread adoption of the Uniform Vehicle Code, however, were cyclists’ arguments in the courts for equal access to the road in the horse-and-carriage age of the mid-to-late 1800s.<sup>83</sup> As a result of cyclists’ legal challenges, some courts held that bicycles were equivalent to carriages and “entitled to a place on the highway, with the usual rights and responsibilities of other vehicles.”<sup>84</sup>

Therefore, in the age of the horse-and-carriage, the quest for road equity by early cyclists arguably shaped early bike common law by viewing bicycles as vehicles on par with carriages. The notion of the bicycle as vehicle subsequently carried over into the age of the automobile and statu-

78. *Id.*

79. John Forester, <http://johnforester.com> (last visited Oct. 28, 2016) (“Cyclists fare best when they act and are treated as drivers of vehicles.”) John Forester is considered the “father” of vehicular cycling in the U.S.

80. McLeod, *supra* note 17, at 878.

81. *Id.* at 876–77.

82. *Id.* at 877.

83. *See, e.g., State v. Collins*, 16 R.I. 371 (1888).

84. Waters, *supra* note 17, at 398 (citing *State v. Collins*, 16 R.I. 371 (1888)).

tory law via the Uniform Vehicle Code.<sup>85</sup> This view of the bicycle is central to vehicular cycling theory.<sup>86</sup>

### 1. Vehicular Cycling Theory and the Shaping of Motorists' Norms Toward Cyclists in the U.S.

An expressive theory of the law suggests that bike law's requirement for cyclists to stop at stop signs has shaped motorists' norms of cyclists at them.<sup>87</sup> Because of the majority rule, motorists expect that cyclists stop, not just yield, at stop signs. This rule arguably is grounded in vehicular cycling theory that accords no special treatment to vehicles, be they human or motor-powered, on the same road, in exchange for each's incurring the same responsibilities and having the same rights on it.<sup>88</sup>

Cyclists who fail to abide by the same rules credo—even at a stop sign where the physics simply don't make sense in many situations—are diminished as scofflaws and a target of bullying by drivers of motor vehicles intent on teaching them a lesson.<sup>89</sup> The majority rule, therefore, serves as a tax on cyclists' actual behavior, even though there is lower justification to tax cyclists, when relative to motorists on shared roadways, they are in a much more vulnerable position.<sup>90</sup>

85. See generally UNIFORM VEHICLE CODE (NAT'L COMM. ON UNIFORM TRAFFIC LAWS AND ORDINANCES 2000).

86. See *supra* notes 81–82 and surrounding text.

87. Cass Sunstein, *Social Norms and Social Roles* 43 (Univ. of Chi. Law Sch., John M. Olin Law & Economics Working Paper No. 36, 1995), <http://www.law.uchicago.edu/files/files/36.Sunstein.Social.pdf> [hereinafter Sunstein, *Social Norms*] (“Many laws have an expressive function. They ‘make a statement’ about how much, and how, a good or bad should be valued. They are an effort to constitute and to affect social meanings, social norms, and social roles.”); Cass Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2022–25 (1996) [hereinafter Sunstein, *Expressive Function of Law*] (discussing the statements made by law and how law can be marshaled to change social norms); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 391 (1997) (“Those who study law should study norms; one reason for this is that an important function of law is to shape or regulate norms.”). Sunstein defines norms roughly as “social attitudes of approval and disapproval, specifying what ought to be done and what ought not to be done. There are social norms about littering, dating, smoking, singing, when to stand, when to sit, when to show anger . . .” Sunstein, *Social Norms*, *supra*, at 11. McAdams, however, distinguishes a norm from a behavioral regularity or convention, by defining a norm as a behavior that involves an obligation. McAdams, *supra*, at 381 (“[B]y norm I mean a decentralized behavioral standard that individuals feel obligated to follow, and generally do follow . . .”).

88. See *supra* note 79 and surrounding text.

89. See generally Piatkowski et al., *supra* note 22.

90. Sunstein, *Expressive Function of Law*, *supra* note 87, at 2034. (“In this light, law might attempt to express a judgment about the underlying activity in such a way as to alter social norms. If we see norms as a tax or subsidy to choice, the law might attempt to change a subsidy into a tax, or vice versa. In fact, this is a central, even if implicit, goal behind much risk regulation policy.”).

Cyclists and mainstream cycling organizations battle against this scofflaw reputation.<sup>91</sup> Likely, one cause of this reputation is the gap between the cycling convention of treating stop signs as yield signs and the legal and social mandate requiring a full stop at stop signs. Despite their members' actual behavior and preliminary evidence supporting the Idaho Rule's effectiveness, this bias against bikers might explain the ambivalence of mainstream cycling organizations toward Idaho-style legislation.<sup>92</sup> Moreover, this prejudice also might illuminate the indifference, and even outright hostility of some policymakers, toward the adoption of the Idaho Rule in their jurisdictions.<sup>93</sup> Its adoption simply would alienate too many drivers and not make for good politics.<sup>94</sup>

*B. Normative Distinctions Between Cyclists and Motorists, Cycling and Driving*

It's ironic that cyclists' nineteenth-century battle for equity on the road arguably set the stage for the modern tug-of-war between cyclists and motorists and cyclists and the law at stop signs. The core of this modern tug-of-war is the vulnerability gap between motorists and cyclists on shared roadways. Cyclists, encased in human flesh as opposed to the steel and iron of motorists, do what is reasonable and necessary to give themselves an advantage when they are so disadvantaged on existing roadways that preference motorists.<sup>95</sup> Given this vulnerability gap and the upward trend of urban cycling, it is, thus, perhaps time to re-assess the notion of one-size-fits-all traffic law as applied to stop signs.<sup>96</sup>

91. Adler, *supra* note 74 (noting that "prominent urban bicycle advocacy organizations [like BikeMN (Bike Minnesota) and New York City's Transportation Alternatives] . . . are already battling cyclists' outlaw image" and quoting Dorian Grilley, executive director at the Bicycle Alliance of Minnesota, that "[t]here is plenty of data out there that shows that bicyclists are regarded as scofflaws. That is a reputation BikeMN is working to change."); *see also* Felix Salmon, *Why It's Not OK for Cyclists to Run Red Lights*, REUTERS BLOG (Aug. 5, 2012), <http://blogs.reuters.com/felix-salmon/2012/08/05/whys-not-ok-for-cyclists-to-run-red-lights> (explaining why when pedestrians and drivers witness cyclists' running red lights, "that only confirms in them their prejudice that cyclists are lawless people with no respect for the rules of the road.").

92. *Supra* Section II.C.

93. Salmon, *supra* note 91.

94. McLeod, *supra* note 17, at 914 (noting that resistance to the Idaho Rule may stem from drivers' perception that it is "cheating").

95. *Id.* at 913–14 ("Bicyclists and motorists are different in many ways, including size, weight, and source of power. These differences have led to some rules that restrict bicyclists, but also some rules that give special abilities to bicyclists.").

96. ALLIANCE FOR BIKING & WALKING, *supra* note 1, at 10 (noting that "[t]he percentage of adults biking to work decreased slightly from 1980 (0.5%) to 2000 (0.4%), but has also seen an increase from 2005 (0.4%) to 2013 (0.6%). Commuters in the [the 50 most populous U.S. cities] studied for this report saw a steeper increase during these years, from 0.7% in 2005 to 1.2% in 2013."); *see also* McLeod, *supra* note 17, at 881 ("Most of our current traffic laws were not written for bicyclists, and it

While traffic law grounded in vehicular cycling theory extols the credo of “same rights, same road, same rules,” it’s not like traffic law already doesn’t make distinctions between cyclists and motorists.<sup>97</sup> Consequently, traffic law might not *solely* be grounded in vehicular cycling theory. Moreover, and depending on the law, the normative burden shifts between cyclists and motorists.<sup>98</sup>

Traffic law that distinguishes between bicycles and automotive vehicles and places the legal burden on cyclists include state “where to ride” law.<sup>99</sup> This law, stemming from the Uniform Vehicle Code, mandates that cyclists ride on the right hand side of the road, with “[c]ommon exceptions for turning left [or] avoiding road hazards.”<sup>100</sup> Another example is a minority rule requiring that cyclists use segregated rights-of-way, either via on-street bike lanes or off-street bike paths.<sup>101</sup> Yet another example is mandatory helmet law, adopted in twenty-two jurisdictions, but one that has never existed in the Uniform Vehicle Code.<sup>102</sup>

Other more recent traffic laws place the normative burden on motorists, yet distinguish between the bicycle and the car as vehicles. Safe passing or three-foot traffic laws that require a certain amount of distance between a motor vehicle and a cyclist on the road, so that cyclists may travel safely on the shared road, are one such example.<sup>103</sup> These laws protect against motorists’ overtaking cyclists, an event that occurs rarely, yet when it occurs, is fatal to cyclists.<sup>104</sup> By 2014, over half of state jurisdictions had these laws on the books.<sup>105</sup>

Similarly, vulnerable road user laws, still rare in U.S. jurisdictions, burden drivers yet distinguish between them and cyclists.<sup>106</sup> These laws enhance penalties “for careless driving that contributed to the serious physical injury or death of a person” who is vulnerable on the road, such as a pedestrian or cyclist.<sup>107</sup> Finally, driving under the influence (DUI) laws

could be time to consider how a system of traffic laws that are not primarily aimed at motor vehicles may differ from our current laws.”).

97. See *infra* text surrounding notes 102–11.

98. See *id.*

99. McLeod, *supra* note 17, at 881–85 (also discussing these laws’ origination in the Uniform Vehicle Code).

100. *Id.*

101. *Id.* at 885–87.

102. *Id.* at 888.

103. *Id.* at 898–99.

104. *Id.* at 902.

105. *Id.* at 899.

106. See *infra* McLeod, *supra* note 17, at 903–05.

107. *Id.*



burden drivers, yet few jurisdictions impose the same burden on bicyclists via biking under the influence (BUI) laws.<sup>108</sup>

*C. Segregated Cycling Theory and the Vulnerability Gap Between Cyclists and Motorists*

That traffic law increasingly distinguishes between cyclists and motorists suggests a movement away from pure vehicular cycling theory toward segregated cycling theory.<sup>109</sup> Even in the U.S. where vehicular cycling theory has been dominant, at least as measured by the lack of segregated and protected bike lanes on roads, law increasingly has been wise enough to realize that bicycles and automotive vehicles aren't exactly the same and shouldn't be subject to the same rules in all situations.<sup>110</sup>

In calling for separate and bike-specific infrastructure such as segregated, protected lanes, segregated cycling theory acknowledges the differences between motorists and cyclists.<sup>111</sup> These differences rest upon the

108. *Id.* at 910 (noting that nine states have laws addressing biking under the influence and the remaining forty-one states have DUI laws, most of which do not address cyclists).

109. Tom Babin, *Vehicular Cycling is Dead, Just Don't Bury the Body Yet*, SHIFTER (June 22, 2016), <http://shifter.info/vehicular-cycling-is-dead-just-dont-bury-the-body-yet>; Tom Babin, *The Philosophy that Has Pitted Cars Against Cyclists for the Last 40 Years is Finally Dying*, L.A. TIMES (July 12, 2016), <http://www.latimes.com/opinion/livable-city/la-oe-babin-protected-bike-lane-20160712-snap-story.html> (discussing segregated bike lanes).

110. *See supra* notes 96–105.

111. Advocates of segregated cycling theory point to the success of cycling capitals, such as Amsterdam, Copenhagen, and Montreal, where this theory took hold in contrast to U.S. cities. *See* Babin, *supra* note 109 (“First, some background. Around the time Forester was developing his ideas for vehicular cycling, a different approach was developing in Europe. Fueled by the oil crisis and grassroots protests from citizens horrified by the post-war takeover of their cities by cars and the carnage they had wrought, a few cities started building safe spaces for bikes on city streets. Amsterdam (and much of the Netherlands), and Copenhagen were chief among these cities.”). *Cycling Facts and Figures*, I AMSTERDAM, <http://www.iamsterdam.com/en/media-centre/city-hall/dossier-cycling/cycling-facts-and-figures> (last viewed Nov. 1, 2016) (discussing Amsterdam); Stacey Moses, *The Great Debate: Vehicular vs. Segregated Cycling*, BIKE SHOP HUB, <http://www.bikeshophub.com/blog/2010/10/26/the-great-debate-vehicular-vs-segregated-cycling> (last viewed Nov. 1, 2016) (discussing Copenhagen); VELOQUEBEC, L'ETAT DU VELO A MONTREAL 4–6 (2015), [http://www.velo.qc.ca/files/file/expertise/VQ\\_EDV2015\\_Mtl.pdf](http://www.velo.qc.ca/files/file/expertise/VQ_EDV2015_Mtl.pdf) (noting that in Montreal, there were a million cyclists—a figure proportional to half the city's populations—and 66% of the population ages 18–74 cycles at least once a week). In Amsterdam, for example, 63% of the city's population rides a bike daily and cycling is more widely used as a mode of transportation as compared to driving. *Cycling Facts and Figures, supra*. There, 32% of transportation is done by bike (48% in the central city) as compared to 22% by car and 16% by public transportation. *Id.* City government in Amsterdam attributes these cycling rates to an investment in bike infrastructure along with the introduction of paid motor vehicle parking in the city center in the 1990s. *Id.* (“The City of Amsterdam has actively invested in ‘the bike’ since the early 1980s in order to encourage cycling. Investment in bicycle infrastructure is . . . vital to make cycling a safe, appealing option, and to ensure it stays as such. Investment is focused on measures including separate cycle paths, red asphalt, cycle traffic lights and new cycle routes, but also on traffic education in primary and secondary schools. Cycling policy alone is not enough to encourage cycling. Other measures also play a role, such as the introduction of paid car parking . . . and reducing the amount of car parking places.”). *Id.*

fact that cyclists are much more vulnerable on shared roads.<sup>112</sup> This vulnerability gap also is likely what drives cyclists' convention of yielding, not stopping, at stop signs and the concomitant breach of social and legal norms. The recent increase in types of traffic law that distinguish between cyclists and motorists—such as mandatory helmet, vulnerable road user, and safe passage law—suggests that policymakers increasingly are more keen to re-think largely one-size-fits-all traffic law predicated on the sameness of bicycles and motor vehicles and more in line with vehicular cycling theory, in favor of a normative approach predicated on difference. Accordingly, Idaho-style legislation permitting cyclists to yield at stop signs while requiring motorists to stop at them seems to align with the modern trend of traffic law that increasingly is grounded in the distinction between cycling and driving and thus segregated cycling theory.<sup>113</sup>

Just as traditional bike law, moored in vehicular cycling theory, shaped motorists' social norms of cyclists at stop signs in previous eras, expressive theory similarly suggests that reform bike law can shape norms, but in a way that aligns with actual cycling behavior.<sup>114</sup> Reform bike law via an Idaho-style rule concedes that bicycles are distinct from motor vehicles on shared roads and should respond differently at stop signs. In contrast with traditional bike law that has emphasized the sameness of bicycles and motor vehicles in alignment with vehicular cycling theory, Idaho-style legislation concentrates on their distinctions pursuant to segregated cycling theory.

There is a divide between actual cycling behavior and what the law and motorists expect of cyclists at stop signs. One way to bridge this divide is to change law to reflect cycling convention and actual cycling behavior. It's not like most cyclists are yielding at stop signs to be intentional scoff-laws—it's simply easier on the body and feels safer to the cyclist by allowing her to get ahead of other traffic, a reasonable decision in light of how vulnerable cyclists are relative to motorists.<sup>115</sup> Indeed, why should the law tax bicyclists and criminalize reasonable behavior when, relative to motorists and in the absence of substantial bike infrastructure, cyclists already are

112. See discussion surrounding *supra* note 95.

113. McLeod, *supra* note 17, at 914 (“The ‘Idaho stop’ law recognizes that bicyclists and motorists do not necessarily need the same rules, because they are involved in very different games. It does not take any appreciable physical exertion for a motorist to stop and start, and a motorist does not face the same severity of danger when he makes a poor decision about his right of way. Bicyclists currently are burdened with conforming to motor vehicle norms, and it does not seem clear how burdens might be redistributed if they were allowed to follow their own.”).

114. See *supra* Section III.A.1.

115. See *supra* Sections II.A-B.1.

being taxed by virtue of their vulnerability on shared roads? In light of this vulnerability and the reasons behind yielding at stop signs, it makes sense that traffic law subsidize cycling convention to yield, rather than stop at them.<sup>116</sup> Cyclists could use the extra protection on road that arguably preferences motorists.

Under expressive theory, changing the law to reflect cycling convention would change not only the legal norm expected of cyclists, but also possibly motorists' norms of cyclists at stop signs.<sup>117</sup> As these laws are publicized, cyclists also would look at themselves with pride, instead of shame at having to flout the law to ride reasonably.<sup>118</sup> Internally, cycling is viewed as an activity that inspires pride, thereby incentivizing this mode of transportation at significantly low cost.

In contrast, motorists might experience the change in the legal norm as a tax and a source of shame. It might no longer be acceptable to view cyclists as scofflaws and, in some cases, act on this view by bullying them on the road. Forms of bullying include yelling epithets, driving dangerously close (even in jurisdictions with safe passage law), trying to cut off cyclists to teach them a lesson, or worse, hitting cyclists and fleeing the scene.<sup>119</sup> Motorists might then join the "norm bandwagon" and bow to the legal norm change enshrining what previously was simply a cycling convention.<sup>120</sup> Therefore, just as law in a previous era was used to shape motorists' norms of cyclists, it can now be used, via Idaho-style legislation, to reverse shape motorists' norms.<sup>121</sup>

There is precedent for the law's adapting to changing social convention. One need only look to Idaho in the 1980s where the gap between traffic law's mandate to cyclists to stop at stop signs and cyclists' natural behavior at them prompted legal reform.<sup>122</sup> In the past decade, changing

116. Sunstein, *Expressive Function of Law*, *supra* note 87, at 2030–31 (discussing social norms and law as exacting a tax or subsidy on behavior).

117. *Id.* at 2031 (stating that when private efforts fail to change norms, law can step in as a "corrective" and "reconstruct existing norms and to change the social meaning of action through a legal expression or statement about appropriate behavior. . . . law will have moral weight and thus convince people that existing norms are bad and deserve to be replaced by new ones."). Environmental regulation and anti-littering laws are examples.

118. *Id.* at 2030–31 (noting that "norm entrepreneurs" seek to change norms via non-legal means by instilling a sense of shame or pride, but when private means fail, the law can similarly inspire these sentiments.).

119. See Piatkowski et al., *supra* note 22.

120. Sunstein, *Social Norms*, *supra* note 87, at 9 ("Norm bandwagons occur when the lowered cost of expressing new norms encourages an ever-increasing number of people to reject previously popular norms, to a 'tipping point' where it is adherence to the old norms that produces social disapproval.").

121. See *supra* discussion at Part III.A.1.

122. Benardi, *supra* note 13.

social norms concerning marijuana have led to its decriminalization in a number of jurisdictions and a wave of legal reform of prohibition.<sup>123</sup> Similarly, changing social attitudes toward same-sex marriage arguably inspired legal change, culminating in the U.S. Supreme Court's lifting of the legal ban on same-sex marriage,<sup>124</sup> just as it did almost 50 years before regarding interracial marriage.<sup>125</sup>

In adapting cycling law to cycling reality via Idaho-style legislation, what is ordinary cycling behavior will be normalized, regularized, and legitimized. Conferring legitimacy on what is otherwise a normal and reasonable choice to yield at a stop sign is not, however, a green light to mow down senior citizens and children or blow through stop signs recklessly, but to align law with reasonable and actual behavior.<sup>126</sup> It is highly unlikely that most cyclists suddenly would start these reckless practices under a regime of legal legitimacy after years of rolling through stop signs in its absence. Moreover, in the interest of self-preservation, and particularly in high-density areas, this likelihood appears smaller still.

#### IV. CONCLUSION AND POTENTIAL EFFECTS ON URBAN TRANSPORTATION PLANNING AND POLICY—INCENTIVIZING CYCLING AND THE EQUITABLE CITY

One potential result of Idaho-style legislation aligning bike law with bike practice is that more people may be spurred to hop out of their cars and onto bikes in daily life for activities such as commuting to work, to school, or to the store. Cycling becomes integrated into daily life, not just a recreational pastime for an occasional weekend.

123. Abigail Geiger, *Support for Marijuana Legalization Continues to Rise*, PEW RESEARCH CTR. (Oct. 12, 2016), <http://www.pewresearch.org/fact-tank/2016/10/12/support-for-marijuana-legalization-continues-to-rise> (“The share of Americans who favor legalizing the use of marijuana continues to increase. Today, 57% of U.S. adults say the use of marijuana should be made legal, while 37% say it should be illegal. A decade ago, opinion on legalizing marijuana was nearly the reverse—just 32% favored legalization, while 60% were opposed.”); *see also* Thomas Fuller, *Voters Legalize Marijuana in Three States*, N.Y. TIMES (Nov. 9, 2016), [http://www.nytimes.com/2016/11/09/us/politics/election-ballot.html?\\_r=0](http://www.nytimes.com/2016/11/09/us/politics/election-ballot.html?_r=0) (noting that as of November 9, 2016, (one day after Election Day in 2016) 20% of adults in the U.S. live in jurisdictions where recreational marijuana is legal, including Alaska, Colorado, Oregon, Washington, the District of Columbia, California, Massachusetts, and Nevada).

124. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

125. *Loving v. Virginia*, 388 U.S. 1 (1967).

126. *See supra* Section II.C; *see also* McLeod, *supra* note 17, at 913–14 (“Although little analysis exists about the effectiveness of this type of law, it appears to legitimize a common bicyclist behavior without any adverse safety effect, and may encourage bicycling by making it easier. This type of law potentially gives bicyclists the ability to make bad decisions about when to proceed, but that risk must be balanced with the benefits that bicyclists may gain and the risk aversion that comes with being an unprotected person sharing the road with motor vehicles.”).

Overlooked and ordinary traffic law may play a role in incentivizing urban cycling and ultimately (and hopefully) re-thinking local and regional urban transportation planning and policy that preferences driving over cycling as a mode of transportation. The city might become cleaner and greener, and its citizens leaner and healthier. The city's opportunities for work, school, and culture may become more accessible to those who cannot or will not drive because of poverty, personal choice, age, or infirmity. Cities might also begin to be increasingly re-designed to think not just about motor vehicles, but also cyclists (and pedestrians). This might mean providing greater ability for cyclists to park their bikes more easily and using municipal policy to discourage on-street and off-street use of land for car storage in the form of gargantuan parking garages or a minimum number of parking spaces. Relative to investment in cycling infrastructure, such as separate signals, protected bike lanes, and bike paths, a mere change in traffic law is economically cost-effective.

Let's not, however, overstate the case for reform of traffic law to include Idaho-style law. In the real-life drama to encourage urban cycling in the U.S., traffic law is a bit player in comparison to the star—investment in more expensive bike infrastructure, such as protected bike lanes,<sup>127</sup> propounded by segregated cycling theory and borne witness in cycling capitals such as Amsterdam and Copenhagen.<sup>128</sup> Still, a little can go a long way and an Idaho-style law may get the city one step closer to making cycling a viable and more popular mode of urban transportation.

127. Waters, *supra* note 17, at 413.

128. See *supra* note 111.