

# The Right of Way

Making Rules for Movement on British Roads, 1896-1930

## Eva Vaillancourt

PhD student, Department of History  
University of California, Berkeley

### Extended Abstract

This paper grew out of a simple observation, which is that roads in 1900 were practically empty of pavement markings. Today, those same roads look like ribbons of hieroglyphs, filled with lines, dashes, arrows and words, flashing lights and cryptic images imposing binding legal duties on the private traveler. Our relationship to those duties is a strange one: I think nothing of crossing the line between two lanes without making the required signal, and I don't think doing so makes me a bad person. But neither will I raise much of a fuss if a police officer stops me and fines me for it. "Fair enough," I'll say to myself. "He caught me breaking a rule. I accept my punishment." How strange this breezy attitude towards law would have seemed to the early-twentieth century driver, who would have likely considered any rule purporting to tell him how he ought to move on the open road (e.g. "signal before lane change," "stop on red," "no left turn," etc.) either a novel attack on ancient liberties, or else just patently absurd. London police officials practically said as much in 1911, when they reviewed a proposal to introduce stop signs on the streets of the capital: most of them didn't even understand how the signs would work, and those who did were sure they'd prove unsafe, unconstitutional, or both. "The traffic in the Metropolis cannot be controlled by signs..." the officers said. "Moreover, any such arrangement would tend to cause drivers of motor and other vehicles to depend more upon signals than upon their own observation," and thus "increase the danger of accidents." In other words, people in 1911 believed that rules for movement either could not or should not be inscribed in space. Fixed rules communicated by signage and street markings were considered a source of traffic danger. A few decades later, they had become some of the most basic tools in our ongoing search for traffic safety.

In this paper, I attempt to map out one facet of what I believe was a fundamental shift in the way we experience law in space. Using internal documents from London's Metropolitan Police, evidence given at public inquiries, and editorial material from both the general and the

“motoring” press, I track the emergence of the modern concept of “right of way” in Britain before 1930. “Right of way,” today, is a principle of criminal law which holds that some road-users have a legal right to proceed along a certain line of direction in the full expectation that other road-users will observe their duty to yield to them. Before the automobile age, though, this same phrase meant precisely the opposite: since the middle ages, “right of way” in Common Law countries had meant the right of all the King’s subjects to travel unimpeded and with equal priority on the public highways. No law could require one road-user to give way to another. There were exceptions, but in general, the English government hewed to the principle that the state had no right to control private individuals’ movements on public roads unless that movement was obstructing the free movement of others. Even the police officers directing traffic at busy London intersections were, legally speaking, only making suggestions.

All this would change with the rise of automobiles, thanks in large part to heavy lobbying by the wealthy and influential people who drove them. Around 1911, motoring advocates began airing a new interpretation of “right of way.” Slow-moving horse, foot, and bicycle traffic, they argued, was obstructing motorists’ freedom to travel the King’s highway at their “natural speed;” it was therefore incumbent upon the state to remove these impediments to the automobile’s “right of way.” The motorists proposed new laws which would have required all pedestrians, cyclists, and horse-drawn vehicles to yield at intersections, thus allowing cars to barrel down main thoroughfares without having to watch for cross-traffic. But police officials were quick to reject any proposal that seemed to give one class of traffic priority over the other. Their position wasn’t about upholding the ancient “right of way” and its principle of equality, nor was it really about their belief that hard-and-fast traffic rules would make roads less safe. Rather, police in this period simply believed that subjective standards like “dangerous,” “reckless,” or “wanton” driving were easier to enforce than concrete rules like “stop at the sign,” “no U-turn,” or even a basic speed limit. In real-life traffic situations, they argued, the difference between the right act and the wrong one depended on an almost infinite number of variables; if the issue were reduced to the simple question of who had followed one particular rule at one particular time, many a murderously bad driver would be able to find shelter in legal technicalities. In order to retain maximum room for maneuver, then, British police consistently declined to endorse concrete traffic rules for the next decade or so.

This attitude began to change in the mid-1920s. As cars became more and more common, more upper- and upper-middle class people were finding themselves in court on traffic charges. Unable to countenance the idea of convicting so many respectable Britons of a serious criminal offense, and with no lesser charge available to them, judges and juries began to acquit those accused of “dangerous driving” en masse. This charge, which in 1910 had seemed like the easiest one to prove, had by 1930 become the most difficult. Embarrassed by their miserable conviction rate in cases of dangerous and negligent driving, police officials endorsed the creation of a less-serious offense called “failure to observe a roadside signal” in 1930. Section 49 of the Road Traffic Act made ignoring traffic signs, pavement-markings, and police directives – including those requiring cross-traffic to yield at intersections, as motoring advocates had proposed 20 years before – an actionable offense. It was, as far as I can tell, the first statutory expression of the idea that some private drivers had a legal right to move ahead of others.

How then did “right of way,” which had been practically inconceivable in 1911, become thinkable by 1930? In this paper, I argue that small, incremental changes in the daily practices of traffic officers all over Britain inadvertently “taught” road-users how to see the road in a new way. The most important of these changes was the introduction of signaling aids like semaphore arms, rotating discs, traffic “wings” and, most successfully, red and green lights. None of these devices was originally intended to replace the traffic officer, but simply to make his directives more visible to drivers. I suggest that as these devices became more common, road-users began to attach the “lawfulness” of traffic instructions to the signaling apparatus itself, rather than to the personal intercession of the policeman operating it. Seeing traffic movement as something impersonal, something that could be regulated by machines, allowed road-users to think of it in terms of pre-existing rights and duties for the first time. Traffic conflicts were no longer so unique and complex that they required the human discretion of a policeman to sort out; rather, they were a simple matter of following rules already inscribed in space, as indicated by inanimate signs and automated signals.

This constituted, I think, a major shift in the way we think about movement and the laws which govern it. Using law to carve up space is, of course, as old as civilization itself, but prescriptive traffic rules like “right lane must turn right” or “no passing” function very differently from those primordial rules humans have always used to enforce boundaries. Boundary lines serve to separate my territory from yours, and our respective territories from

unclaimed land outside. The only legal issue at play is who may cross those lines, and when. Boundary lines mark out spaces of license and prohibition: my territory and yours. Traffic law, on the other hand, identifies specific *movements* in neutral space and deems them legitimate or illegitimate: an illegal left turn, a rolling stop. It turns movement on the open road into a highly choreographed dance, and punishes anyone who makes the wrong move at the wrong time.

The story of traffic law's emergence in the first half of the twentieth century is the story of two worlds coming to terms with one another. On the one hand, there is the world of the street, in all its irreducible complexity and inalienable exposure to chance; on the other, there is the world of law, which seeks to tame that unpredictability. But as the history of "right of way" shows, the impact of one world on the other is not unidirectional. Lawmakers did not observe the phenomenon of "right of way" emerge organically in real traffic behavior and then write it into legislation, nor did they invent it themselves and impose it upon the street. Rather, "right of way" emerged in the dialog *between* law and material life. New ways of managing old norms enabled new ways of thinking about the norms themselves. It is my hope that seeing this process at work in history will help traffic-safety practitioners today better understand the inherently reciprocal relationship between lived experience and the concepts they use to explain and control it.

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