

1-1-1970

Traffic and the Police. By John A. Gardner.

James P. Manak

University at Buffalo School of Law

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Criminal Law Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

James P. Manak, *Traffic and the Police*. By John A. Gardner, 19 Buff. L. Rev. 461 (1970).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol19/iss2/34>

This Book Review is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

TRAFFIC AND THE POLICE. By John A. Gardner. Cambridge, Massachusetts: Harvard University Press. 174 Pages. 1969.

JAMES P. MANAK*

At first glance one might wonder why John Gardner, an Associate Professor of Political Science at the State University of New York at Stony Brook and formerly a consultant to the President's Commission on Law Enforcement and the Administration of Justice (1966-67), chose to examine law enforcement techniques and statistics pertaining to our traffic laws, a topic ordinarily considered to be somewhat unimportant. After all, traffic laws are wholly statutory and fairly uniform throughout the fifty States and Canada and indeed are rapidly approaching the point of absolute uniformity. Unlike the great variety of laws, statutory and common, dealing with personal or property offenses generally, it can be predicted, with a fair degree of certainty, what sort of vehicular behavior will put a citizen driving from New York to Los Angeles in jeopardy of violating a traffic law, even though he may never have seen the traffic laws of the states through which he travels. On the other hand, if our hypothetical traveler were foolish enough to appropriate to himself an automobile in Kansas in a transaction notably lacking in consideration he might find himself facing a Grand Larceny charge¹ carrying a sentence of not less than five nor more than fifteen years in prison at hard labor.² This charge is markedly dissimilar to the relatively innocuous misdemeanor of Unauthorized Use of a Vehicle³ to which our traveler would be subject in New York for the same behavior, a charge carrying a maximum sentence of a mere (by comparison) year in a penitentiary or reformatory.⁴ Again, therefore, many prospective readers may wonder about the point of such a study and perhaps dismiss the whole idea as an academic exercise of little merit.

The point is, however, that while traffic laws *are* generally uniform, the effective levels of enforcement are not, and the disparity from municipality to municipality is quite pronounced. Thus, the study of the inequalities existing in traffic enforcement and the policies responsible therefor leads Professor Gardner to produce an extremely well written study of the role of police discretion in traffic enforcement as a part of law enforcement generally.⁵

* Lecturer, School of Law, State University of New York at Buffalo.

1. KANSAS STAT. ANN. § 21-533 (1964).

2. KANSAS STAT. ANN. § 21-535 (1964).

3. N.Y. PENAL LAW § 165.05 (McKinney 1967).

4. N.Y. PENAL LAW §§ 70.15(1), 75.00(1)(2), 75.20(2) (McKinney 1967).

5. The topic has been ably examined in other contexts in recent years. See generally Goldstein and Remington, *The Police Role in a Democratic Society*, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: ORGANIZED CRIME, 18 (U.S. Gov't Printing Office ed. 1967); Goldstein, *Administrative Problems in Controlling the Exercise of Police Authority*, 58 J. CRIM. L.C. & P.S. 160 (1967); Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543 (1960).

Professor Gardner's study is based on the statistics of some 700 police departments and agencies, as well as census data, personal interviews and first hand observations. The author made first-hand studies of the traffic law enforcement practices and policies of four cities in Massachusetts—Lynn, Waltham, Malden, and Cambridge—to ferret out the factors determining police decision-making in traffic law enforcement.

Lynn, as described by Gardner, is essentially a stable industrial city of 94,000 people stressing the caretaker and low-tax philosophies of city government. Its population is composed largely of individuals employed in local factories, while most of those who could be called the upper-middle-class live in the surrounding suburbs. The Lynn police department is under, as are the departments of the other three cities studied, the state civil service system. Training is on a rather haphazard basis and, except for four patrolmen regularly assigned to traffic duty out of 150 patrolmen, 34 officers and an assortment of civilian employees, the official policy of the department appears to be that every man on the force is responsible for traffic law enforcement. Very few traffic tickets are written in Lynn and most of these are for serious traffic offenses. Gardner discovered that the men of the Lynn Police Force are not encouraged to write tickets and in several ways are actually discouraged from doing so, and that this policy is essentially one set by the chief as his own conception of how traffic laws should be "enforced." The chief of the Lynn force stresses the giving of warnings to errant motorists and the fostering of a feeling of "security" among the populace, a policy apparently meeting with the approval of city councilmen and citizens alike. As a consequence, traffic law enforcement among the men of Lynn's police force is understandably low in interest.

Waltham, a city of 55,000 people, is described as a home-owning, middle and lower-middle class city, with few extremes of poverty or wealth. Governed by the traditional mayor-city council system, its political philosophy, we are assured by Gardner, is that of "moderate" consensus government. The police force numbers approximately 100 men and officers but unlike the situation in Lynn the department in Waltham pursues a strict traffic law enforcement policy. With the notable exception of a well-organized traffic bureau, the two police departments are similar. The chief in Waltham *expects* his men to write traffic tickets and, understandably enough, most of his men seem "interested" in traffic law enforcement. Added to this is the fact that the officer in charge of the traffic bureau is intensely caught up with the idea that strict traffic law enforcement is the *only* effective type of enforcement. Essentially, however, according to Gardner, the fact that police officers in Waltham write many more traffic tickets per man than their counterparts in Lynn is due to the highly personalized view entertained by each chief of his role as a "nice guy" concerning traffic enforcement. The chief in Lynn apparently feels that being "nice" implies a duty not to push his men and not to alienate local citizens by

a policy of strict enforcement. The chief in Waltham, on the other hand, feels that strict traffic enforcement *is* part of being a "nice guy."

The third city closely studied, Malden, has been described by the Malden Evening News as a "seedy city in many respects," with urban renewal and development being "perhaps the biggest things that ever happened." Socially, economically and politically, it appears to be a smaller version of Lynn. With a 1960 population of 58,000, most of its residents are middle and lower-middle class workers employed by local manufacturing and trade firms. Like Lynn and Waltham, Malden appears to be without a resident business-leadership class and again the caretaker philosophy predominates. Many of the same attitudes toward traffic law enforcement found in the Lynn police department are predominant in Malden. With the exception of two men on the force, no one is specifically assigned to traffic work and, theoretically at least, every man in the department is involved in these duties. The Malden Chief of Police has a noticeably easy-going attitude toward not only traffic law enforcement but apparently toward gambling and vice enforcement as well. His desire to "understand other people's problems" apparently fits well into the law enforcement attitudes of the mayor and city councilmen when dealing with offenses other than serious personal and property crimes. As a consequence of the personal attitudes of the chief, relatively unencumbered by the mayor or the city council, few traffic tickets are written. Instead, reliance is placed on oral warnings to traffic law offenders.

Cambridge, with over 100,000 people, employs the city manager form of government. It has three distinct social and economic forces: the "good government" or upper-middle class group, the "friends and neighbors" or lower-middle class group, and the "compromisers" who occupy social and economic positions somewhere in the middle of these two extremes. Although the chief executive has usually been drawn from the "compromisers" group, no one of the three groups predominates in the city government. Cambridge, of course, also has a large non-resident population composed largely of college students.

Under the relatively independent management of a progressive chief of police who stresses training and specialization within the department, every patrolman in the department is expected to write traffic tickets regardless of whether he is in the traffic division or the uniformed division. The chief regularly reviews the ticket-writing activities of each man in the department and reprimands those who produce few or no tickets. In striking contrast to Lynn, where the expressed policy of the chief that "all men are on traffic" really means that "no men are on traffic," in Cambridge this expression appears to mean exactly what it says. Accordingly, the number of tickets written per man in Cambridge is dramatically higher than the number written in Lynn. It is interesting to note that no particular opposition or support to the traffic enforcement policies of the chief in Cambridge exists and he thus draws upon

scant guidance from outside the department in setting his policies on this subject.

Gardner concludes from his study of these four cities that those police forces displaying a high level of ticket-writing combined a specialized unit for traffic law enforcement with a definite policy on the part of superior officers that violators should be ticketed rather than let off with verbal warnings. The reasons for such a policy appear twofold: the first is a belief that strict enforcement has a direct bearing on the level of traffic safety in a community, although this assumed correlation failed to appear in Gardner's examination of accident statistics in the cities sampled. The second reason appears to be a highly personalized view of the chief that traffic law enforcement is a kind of end in itself, an end to be pursued with conscientious vigor. Low ticketing police departments felt that traffic law enforcement was an unimportant police function and that most violators should be ignored or given a verbal warning. Police chiefs in the cities that downgraded traffic enforcement seemed almost shocked at Gardner's suggestion during personal interviews that traffic violators were *law* violators.

In searching for the reasons for this difference in treatment between police agencies, Gardner first examines the "public pressures" interpretation of police policies. Surveying the positions of traffic safety councils, newspaper editorial writers, and civic organizations on the subject, he concludes that although citizens and public officials frequently attempt to influence individual police decisions, primarily through ticket fixing,⁶ they have very little knowledge of what the policy of their own department on traffic law enforcement is and generally they are not interested. While it is no doubt true, as Jerome H. Skolnick has noted,⁷ that vigorous traffic law enforcement has the potential for jeopardizing police-community relations, it seldom materializes except in fairly isolated and aggravated circumstances.

Looking next to the influence of environmental factors, Gardner was unable to find any strong relationship between traffic accidents and police ticketing other than the occasional and temporary "sun burst" of stepped-up police activity caused by a spectacular fatality. By the same token, there was little evidence that traffic law enforcement was influenced to any appreciable extent by court policies other than sporadic reactions to an occasional antagonistic judge. A survey of 508 American cities with populations greater than 25,000 showed no appreciable correlation between income, education, ethnology, or housing, and ticketing practices.

Gardner, however, was able to detect some correlation between the geo-

6. Ticket "fixing," according to one safety council estimate, accounts for the disposition of one-half of all tickets written in the state. Massachusetts has not adopted the Uniform Traffic Summons procedure which makes "fixing" virtually impossible once a ticket has been written.

7. J. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY* 71-88 (1966).

graphical stability of a city's population and the severity of traffic law enforcement. Surveying the same 508 cities, he found that the more mobile the population of the city, the stricter its ticketing policy. At the same time he exploded any hope that democratic-theorists might have entertained about ticketing policy being related to community attitudes as such. As noted above, he found that the almost unanimous opinion of those polled was to the effect that the public is almost totally uninformed concerning traffic law enforcement policies and seemed to care even less. He concludes that it is more reasonable to believe that community stability influences police attitudes toward the public and that the police in a stable community, particularly in a smaller city or town, are likely to take a more lenient non-ticketing attitude toward violators than police in more mobile or unstable communities, where they are more likely to rely upon formal actions (arrests or tickets) in response to traffic law violations. This conclusion is supported by Michael Banton⁸ whose study of two Scottish and three American police forces found a direct relationship between the level of social integration (the level of consensus or agreement on fundamental values) and the use of informal methods of dealing with law violators. In the more integrated cities, Banton argued, the police have greater confidence in the ability of informal sanctions to produce changes in conduct, whereas in the less integrated cities they are likely to feel that only formal sanctions will be effective.

In the end, Gardner concludes that although some forms of unequal enforcement such as ticket-fixing, personal feuds of police officers, harassment of specific groups of motorists and variations in the attitudes of individual police officers toward the importance of traffic work may be responsible for some part of the variations in effective enforcement rates, the greatest single variable remains that of departmental policy itself and that to the greatest extent such policies are formed by the conscious or unconscious judgments of the police chief and other superior officers. The most unfortunate part of Gardner's conclusion is that the police themselves receive only minimal guidance and instruction on policy-making from either the public generally or its elected representatives. As a consequence, they are forced to develop their own bases for traffic law enforcement and it is not surprising that wide variations exist from department to department. In other areas of law enforcement, such as personal crimes, civil disorders and property crimes, a high degree of police responsibility is produced, as Gardner notes, by a clearer and more attainable set of instructions resulting from a higher level of public surveillance. In those areas of police activity, the police come under regular and systematic scrutiny from special interest groups such as the chamber of commerce, the American Civil Liberties Union or other civil rights organizations, as well as the bar and the judiciary. In the traffic situation virtually no one knows what policies the police are following or should be following. This includes the traffic

8. M. BANTON, *THE POLICEMAN IN THE COMMUNITY* 127-146 (1964).

safety councils, which for some curious reason have never turned their attention from public education to the effectiveness of traffic law enforcement. Of course, much the same can be said of the enforcement of gambling and prostitution laws, two other prominent areas of low public visibility.

Gardner's final conclusion is virtually indisputable and should provide a guideline for action for all members of the bar and judiciary. It might be added that this includes those who presently luxuriate in the misguided view that traffic enforcement policies are insignificant. These people unfortunately overlook the fact that traffic enforcement, like our much neglected traffic courts, is frequently the *only* personal contact, and thus the prime generator of impressions and opinions, that the public has with either law enforcement generally or with the administration of criminal justice. In Gardner's own words:

If we wish to reduce irresponsibility among police officers in the handling of such poorly defined areas as traffic, gambling, or prostitution, it must come through a clarification of the purposes of police action and an identification and intensification of public surveillance. Until a greater level of consensus and support is generated, the police are scarcely to be blamed for their varying responses to the problems of traffic policy and enforcement.⁹

9. P. 165.