

Speeding: A Sprawling Offense?

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Urban sprawl and aggressive driving are two problems that afflict many of America's major cities. The two affect Atlanta to a notoriously high degree. The two problems are connected. Aggressive driving is not so much a symptom of "road rage" as it is an attempt to communicate with slower drivers. The aggressive driver tailgates other drivers with the intention of letting them know that they are impeding the flow of faster traffic. Aggressive drivers are engaged in what "New Chicago School" legal theory calls "norm seeding." These drivers are trying to get others to conform to a different norm than what the posted speed limit dictates. The posted speed limit, which is the legal norm, reflects legislative judgments based on concerns of safety and fuel economy. The higher, informal, speed limit reflects something else: the impatience many drivers feel as they drive larger distances and spend correspondingly greater amounts of time in traffic.

The informal norm—call it "speeding"—effectively shrinks the perceived distances between places, if only marginally. The option of speeding tempts commuters to think that moving their residences farther out will not unduly inconvenience them. The lower dollar cost of housing in the far suburbs is thus less likely to be adjusted upward to reflect the greater "opportunity costs" associated with time on the road. What counts, after all, is time, not distance. The speeding norm encourages commuters to believe that living farther out isn't so far out after all. So long as they are free to shrink perceived distances by putting pedal to metal, they may be right—but only if other drivers fall into line.

Many drivers report that they would not speed if given the choice. But they feel that they have no choice because drivers behind them "push" them to higher speeds. This pushing is the self-appointed task of the aggressive drivers who, as they go their way, act to enforce the informal, and illegal, speeding norm. "Pushing back," that is, adhering to the posted speed limit, is not considered to be an option. Nor, between pushes, do Atlanta drivers throttle back to a lawful speed. It is, as it were, one's duty to obey the sprawl.

Strict enforcement of the speed limits would, in and of itself, function as a brake on sprawl. Law enforcement knows this, but it also knows that every blue light on the freeway tends to create a bottleneck. Bottlenecks themselves create safety hazards, not to mention driver frustration. The tacit priority of Atlanta-area law enforcement is to minimize impediments to traffic flow, which means letting the informal norm dominate. In effect, the legal norm is unenforced while the informal norm is aggressively enforced, by aggressive drivers.

Sprawl is an instance of what in game theory is called a "many-person prisoners' dilemma." In its two person formulation, the prisoners' dilemma shows that each person's separately pursuing what is better for him can lead to a worse outcome for both. Imagine that two persons accused of a joint crime are separately interrogated. Both will be sentenced for a short term if each keeps his mouth shut; but each knows that his own best outcome would be to blame the other and escape all punishment. Each does what is best for himself—blame the

other—and as a result both are worse off: both go to prison for a longer term. Urban sprawl has the same structure; the only essential difference is that there are many players rather than only two. All are better off if all live closer in and obey the speed limit. But each knows that he can reach cheaper housing farther out and, by speeding, live farther out without incurring a longer commute time—if other drivers will hurry it up. What seems better to each leads to what is worse for all: sprawl, traffic congestion, injuries, fatalities, air pollution, and (not the least) disrespect for law.

Prisoners' dilemmas are avoidable if the players can communicate—that's what legislatures are for. But most proposed legislative solutions to the sprawl problem, such as creating a regional government, face daunting political obstacles. Enforcing the traffic laws requires no new legislation and relatively modest resources. "Aggressive Driving" is a defined offense punishable as a "high and aggravated" misdemeanor (\$5000 or 12 months confinement). OCGA §40-6-397. But not all speeders are aggressive drivers, nor are speeders or aggressive drivers typically engaged in "Reckless driving" (OCGA §40-6-390) or "Racing on the streets" (OCGA §40-6-186—which targets "competition or contest," not cooperation). First-offense speeding is punishable by fines keyed to the excess speed, on a scale from \$0 (less than 5 mph over the posted limit) to \$500 (24-34 mph over the posted limit). OCGA §40-6-1(b). Speeding fines may not be steep enough to deter, unless the probability of being cited is dramatically increased. "Quieting" traffic by increasing the number of citations, and the attendant bottlenecks, may lead to a popular backlash. Is there a way, without new legislation and without blue lights everywhere, to increase the perceived severity of a traffic conviction, and so add some deterrent punch? I think there is, and I offer the following modest proposal.

Aggressive drivers send the following message: "Let's you and me break the law." Aggressive drivers are engaged in recruiting speeders and, as such, are prosecutable for the crime of conspiracy. Conspiracy, in Georgia, is a crime of the same degree as its target offense; and no-one can be convicted of both conspiracy and the completed target. OCGA §16-4-8.1. There is thus no advantage to prosecuting aggressive drivers for conspiracy, but what about the speeders they recruit? If speeders are conspirators, that exposes them to misdemeanor liability of \$1000, 12 months confinement, or both, rather than mere fines. OCGA §§ 17-10-03, 40-6-1(a). But *are* speeders conspirators? As Justice Stone wrote for the U.S. Supreme Court in *Interstate Circuit*, no meeting of the minds is needed to prove conspiracy; it is "enough that, knowing that concerted action was contemplated and invited, [they] gave their adherence to the scheme and participated in it." Speeding along with the lawless flow is conspiracy, what Justice Jackson presciently called "that elastic, sprawling, and pervasive offense."