

Traffic Cameras and the Reclassification of Crimes to Civil Violations

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Abstract: In this paper, we analyze the increasing efforts by the states to crack down on speed and red-light violations via the use of traffic cameras, how the states seem to have gotten around the Confrontation Clause by reclassifying crimes to “civil violations,” and the numerous issues with this approach.

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I. Introduction

Milton Friedman, in his *Why Government Is the Problem*, notes that “If there is any function of government that all but the most extreme anarchist libertarians will agree is appropriate, it is to protect individuals in society from being coerced by other individuals.” He also notes that the more laws there are to break, the harder it is to prevent them from being broken because a “larger and larger fraction of the laws fail to command the allegiance of the people.” Friedman continues: “You can rigidly enforce only those laws that most people believe to be good laws, that is, laws that proscribe actions that they would avoid even in the absence of laws.”¹ When laws render illegal actions that many or most people regard as moral and proper, they can be enforced only by brute force. Speed laws are an obvious example.”²

For whatever reason, the many state governments have been cracking down on speed and red-light violations at an increasing rate—the reasons for this are not entirely relevant to our present discussion. Here, we will tackle the increasing efforts by the states to crack down on speed and red-light violations via the use of traffic cameras, how the states seem to have gotten around the Confrontation Clause, and the issues with this approach.

II. Background

The Sixth Amendment to the United States Constitution, made applicable to the

¹ Murder, the unjust taking of a life, would be an example.

² MILTON FRIEDMAN, *WHY GOVERNMENT IS THE PROBLEM* 2 (Hoover Institution Press 1993).

States by the Fourteenth, reads: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”³

In many states,⁴ when one is pulled over by a police officer for alleged speeding, he is charged with a criminal misdemeanor. This is acceptable under the above framework. Other states, however, classify these as various types of non-criminal infractions—we will call these “civil violations”—and, by doing so, are able to navigate around the procedural safeguards of the Constitution. It is by this exact same method that states are able to avoid the Confrontation Clause and other constitutional protections in citation cases originating from traffic cameras. Using civil violations, states and other levels of government can charge citizens without

³ U.S. Const. amend. VI.

⁴ As of January 24, 2025, the following states classify speeding as a misdemeanor criminal offense: Alabama (*Ala. Code* § 32-5A-8); Arizona (excessive speeding only, *Ariz. Rev. Stat. Ann.* § 28-701.02); Arkansas (*Ark. Code Ann.* §§ 27-50-302, -304); Delaware (*Del. Code Ann. tit.* 21, § 4205); Georgia (*Ga. Code Ann.* § 40-6-1); Illinois (third or subsequent offense, 730 *Ill. Comp. Stat.* 5/5-4.5-65; or excessive speeding, 625 *Ill. Comp. Stat.* 5/11-601.5); Iowa (*Iowa Code* § 321.482); Louisiana (*La. Stat. Ann.* § 32:57); Maryland (*Md. Code Ann., Transp.* § 27-101); Minnesota (three or more violations within a year, *Minn. Stat.* § 169.89); Mississippi (*Miss. Code Ann.* § 63-9-11); Missouri (20+ mph above limit or violating careful and prudent standard, *Mo. Rev. Stat.* §§ 304.010, .012); Montana (*Mont. Code Ann.* § 61-8-711); Nevada (*Nev. Rev. Stat.* § 484A.900); Ohio (*Ohio Rev. Code Ann.* §§ 4511.21, .99); Oklahoma (*Okla. Stat. Ann. tit.* 47, §§ 11-801, 801e); South Carolina (*S.C. Code Ann.* § 56-5-1520); South Dakota (*S.D. Codified Laws* § 32-25-1.1); Tennessee (*Tenn. Code Ann.* § 55-8-152); Texas (*Tex. Transp. Code Ann.* § 542.301); West Virginia (*W. Va. Code Ann.* § 17C-6-1); and Wyoming (*Wyo. Stat. Ann.* § 31-5-1201). Other states classify speeding differently.

probable cause, witnesses, or due process—essentially depriving them of all of their Constitutionally protected rights regarding criminal proceedings. This practice is unacceptable. The argument that this reduces strain on criminal courts and increases legal administrative efficiency does not matter under the Sixth Amendment; the Constitution does not permit the government to violate the rights of the people in the name of ‘efficiency.’ This is a dangerous precedent, and it substantially undermines America’s Founding principles.

Let us now examine the history of classifying crimes as civil infractions.

III. History

The distinction of public wrongs from private, of crimes and misdemeanors from civil injuries, dates back to early common law. Blackstone⁵ explained that “private wrongs, or civil injuries, are an infringement or privation of the civil rights which belong to individuals, considered merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community, considered as a community, in its social aggregate capacity.”⁶ Civil injuries occur between two men, whereas public wrongs occur between man and community. Public wrongs were divided into two categories: crimes (what we now call “felonies”) and misdemeanors, the earlier denoting such offenses as are “of

⁵ Sir William Blackstone is the most cited source on the English common law, and he was profoundly influential to the American Founders. Hon. Paul Matey, “Indispensably Obligatory”: Natural Law and the American Legal Tradition, 46 HARV. J.L. & PUB. POL’Y 967, 973–974 (2023) (“[A]ll the formative documents of the Framing Era were drafted by legal thinkers steeped in Blackstone’s theories.”).

⁶ 4 WILLIAM BLACKSTONE, COMMENTARIES *5-6.

a deeper and more atrocious dye,” and the latter denoting “smaller faults.”⁷

The common law system of the colonies (and later, the United States) was not just *inspired* by the English common law, but rather, it was, in many ways, a *replication*.⁸ In parts of the *Federalist Papers*, the line between civil and criminal cases is also quite clear.⁹ It is also worth noting, in a 1952 piece for the South Carolina Law Review examining the consequences of classifying crimes as *either* felonies *or* misdemeanors,¹⁰ there is no mention of what we call a “civil violation.” Up until here, our understandings of the classifications of public wrongs and private, felony and misdemeanor and civil injuries had remained roughly the same, but one thing has remained notably absent: civil violations, which came to the picture in the mid-twentieth century.

In the 1960’s, the American Law Institute published their *Model Penal Code*, which expressly recognized “violations” as non-crimes for which no imprisonment may be imposed.¹¹ This marked a crucial move away from the ‘old’ classification—a change that many states later mirrored. In 1961, for example, the New York Legislature created the State Commission on Revision of the Penal Law and Criminal Code. The Commission prepared a “comprehensive revision of the *New York Penal Law* for consideration by the 1965 session of the legislature.”¹² The

⁷ *Id.*

⁸ *Commonwealth v. Knowlton*, 2 Mass. 530, 535 (1807).

⁹ THE FEDERALIST NO. 83 (Alexander Hamilton).

¹⁰ George A. Thomy, Note, *Classification of Crimes as Felonies or Misdemeanors*, 5 S.C. L. REV. 59 (1952).

¹¹ MODEL PENAL CODE § 1.04(5) (AM. LAW INST. 1962).

¹² Note, *The Proposed Penal Law of New York*, 64 COLUM. L. REV. 1469, 1469 (1964).

proposed New York penal law introduced the subcategory of “violation” to encompass every offence that is not a crime—*id est*, a felony or a misdemeanor. In doing so, “the revisers have succeeded in integrating less serious offenses into the penal law without attaching all the infamy of criminality.”¹³ Interestingly as well, New York still attaches possible prison sentences to violations,¹⁴ making the topic at hand of even more import to the citizens of New York. Interestingly, New York maintains a separate classification of “traffic infraction,”¹⁵ but the case, here, remains the same; the state of New York maintains the definition of “crime” as a misdemeanor or a felony,¹⁶ leaving the other offenses outside of the criminal classification. New York is just an example—it should by no means be understood as just the exception.¹⁷

Civil violations, by whatever name, are different from civil injuries in the sense that civil injuries are understood to be between man and man, whereas civil violations are between man and *government*—much in the same way as public wrongs—except with the distinction that public wrongs are between man and *community*. The difference, essentially, though, is a practical one: in creating a new classification that involves a familiar relationship, government is able to circumvent procedural safeguards to liberty, directly contradicting America’s founding principles.

¹³ *Id.*

¹⁴ N.Y. Penal Law § 10.00 (Lexis Advance through 2025 released Chapters 1-429).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See supra* note 4.

IV. American Principles

In order to ensure the protection of man’s inalienable natural rights and legal equality, America’s Founding Fathers wrote a constitution that was “designed to allow for action in cases of grave national need, as demanded by broad consensus; gridlock in cases of serious disagreement, to protect minorities from the tyranny of majorities,” favoring local control on behalf of local communities, but a national protection of individual rights.¹⁸ The Founders not only feared “tyranny of the majority,”¹⁹ but also tyranny in the more ‘traditional’ sense. One way to protect against tyranny and preserve liberty is to provide constitutional safeguards regarding criminal procedure.

Let’s take the institution of trial by jury, for example. The Founders held this institution in criminal trials to be an inestimable “safeguard to liberty” and an important protection from oppressive government.²⁰ As a protection *from government*, this necessarily implies that cases in which the government is the plaintiff, a citizen the defendant, and the liberty and/or property of said citizen being at stake, are cases of the criminal type, not of the civil. This is made even more evident through Hamilton’s discussion in FEDERALIST 83 regarding the decision for the Constitution to remain silent on the institution of trial by jury in civil cases. This discussion on the institution of trial by jury shows, yet again, the divide placed between criminal and civil cases.

¹⁸ BENJAMIN A. SHAPIRO, HOW TO DESTROY AMERICA IN THREE EASY STEPS 14 (2020).

¹⁹ GEORGE A. PEEK, JR. ED., THE WRITINGS OF JOHN ADAMS 154 (Hackett Publ’g Co. 2003) (quoted in *id.*).

²⁰ HAMILTON, *supra* note 9.

Hamilton’s continued discussion on other safeguards in criminal trials in FEDERALIST 84 only furthers this point, and, as Hamilton noted, “The observations of the judicious Blackstone ... are well worthy of recital...”.²¹

To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation.²²

The safeguards enshrined in the Constitution exist to protect liberty. Reclassifying crimes to “civil violations” to avoid these safeguards is not only unjust, but in direct opposition to the American experiment.

V. The Main Refutations, Answered

Some argue that reclassifying some offenses such as speeding reduces strain on criminal courts and increases legal administrative efficiency. As was noted above, this does not matter under the context of the Sixth Amendment. This leaves us with a more well-founded refutation: that the existence of “civil violations” addresses the infamy attached to criminal convictions.

The main positive of decriminalization is that, if charged with a civil violation, one does not face the same legal disadvantages as he would face if he were to be charged with a criminal offense. However, the same issue remains: under the context of the Sixth Amendment, and what was discussed earlier, this does not matter. A better way to address this issue would be to create another category

²¹ THE FEDERALIST NO. 84 (Alexander Hamilton).

²² 1 WILLIAM BLACKSTONE, COMMENTARIES *136. (quoted in *id.*).

under the criminal classification and emphasize that minor criminal offenses such as traffic cases are not to create legal disadvantages.

VI. Conclusion

Over the years, states have cracked down on speed and red-light violations at an increasing rate. They utilize the relatively new concept of a “civil violation” to avoid the protections enshrined by the United States Constitution, and in doing so, they unjustly place the liberty of the people in jeopardy. The issue of traffic cameras only exposes the larger issue at hand. While there may be some good that comes out of decriminalization, the same good can be accomplished in other ways that do not violate the rights of the people. If we allow government to reclassify offenses however it pleases, what is stopping it from reclassifying other offenses that place the people’s liberties in even more danger? This is one of the many paths to tyranny.