

TRAFFIC COURT (IN)JUSTICE

BY PAMELA K. BOOKMAN

IF YOU HAVE EVER REPRESENTED YOURSELF IN COURT, IT MAY HAVE BEEN IN TRAFFIC COURT.¹ You likely brought (or tried to bring) your lawyerly skills to bear. In the process, you may or may not have been aware that almost 50 percent of all cases across the country are filed in traffic court and that this lowest level of justice also provides many people's closest interaction with the state and the justice system.² Yet few of us who study courts think much about traffic courts. Even the recent wave of excellent literature on state and local civil courts³ often puts these courts to the side.

Justin Weinstein-Tull ends this sidelining with a wonderful new article that uses a mixed-methods approach to present a vivid picture of the justice, and injustice, in traffic courts. Weinstein-Tull has conducted 50-state surveys, interviewed traffic court judges, and even sat through the three-day training necessary to become such a judge in Arizona. The result is an

informative and thought-provoking exploration of the courts that many of us interact with, that oversee people's most likely interactions with the police — at traffic stops — but about which we know so little.

The article proceeds in three parts: Convincing us why we should care about traffic courts; describing a diverse landscape of traffic courts that nevertheless, in general, seem

grounded in informality, discretion, and lay notions of fairness; and analyzing how traffic courts shed light on different categories of courts in this country — precedential and nonprecedential, judicial and administrative.

The first task Weinstein-Tull accomplishes easily. We should care about traffic courts! Whether subdivisions of general jurisdiction state courts (as in California and four other states) ►



WHAT ARE TRAFFIC COURTS FOR? ARE THEY CIVIL OR CRIMINAL? ARE THEY INTENDED TO DEVELOP LAW (SURELY NOT), RAISE REVENUE, RESOLVE FACTUAL DISPUTES, ENFORCE TRAFFIC SAFETY, PUNISH BAD DRIVERS, OR DISCOURAGE UNREASONABLE SPEEDING?

or dockets of municipal, limited jurisdiction courts, traffic courts hear vast numbers of cases that affect people's lives in important ways. In 2021, traffic cases constituted almost 50 percent of cases filed in state courts (which hear 98 percent of cases filed in the United States).⁴ That means that of the 63 million cases filed in state courts⁵ (compared to 421,860 cases filed in federal courts in 2021)⁶, almost 30 million were traffic cases. Sheer volume, however, belies the human stories that each case represents — the father who missed court dates and racked up debt because he was caring for his sick child⁷; the woman who could no longer drive to work once her license was suspended⁸; the man arrested for failing to pay traffic fines and fees who spent time in jail and lost his job as a result.⁹ As so many studies have shown, traffic is policed most stringently in neighborhoods of color; therefore the consequences of traffic courts fall heavily there as well.¹⁰ The cases also represent “an implied judicial imprimatur” on traffic policing, while providing perverse incentives because the state collects so much revenue through these fines and fees.¹¹

The bulk of the paper describes traffic courts from the ground up, following the methodology that scholars such as Anna Carpenter, Colleen Shanahan, Jessica Steinberg, and Alyx Mark,¹² as well as Andrew Hammond,¹³ used to study the unrepresented in state civil courts and in federal courts. While states and localities organize traffic courts in different ways, Weinstein-Tull identifies a few generalizable qualities: “their diversity,

their informality, their discretion, and the forms of fairness they instantiate.” That diversity of traffic courts — like the diversity of state and local courts generally — makes them difficult to study, but also makes that study fruitful and rewarding. Traffic courts and dockets can land in different parts of a state or local judicial structure, and judges can be state court judges or lay administrators.

Despite this variety, however, some generalizable characteristics emerge. Weinstein-Tull calls these courts “legally informal.” They are lawyerless — neither the drivers nor the police officers who represent the state usually have counsel, and often the judges themselves are not lawyers.¹⁴ They are procedurally informal, often as required by statute. For exam-

ple, Hawaii's Civil Traffic Rules specify that traffic hearing procedures “shall be informal[;] . . . [a] prosecutor will not be present[,] and witnesses will not be required,”¹⁵ while “the rules of evidence shall not apply”¹⁶ in Massachusetts traffic court. Finally, traffic courts are driven by discretion. Traffic court judges wield tremendous discretion in what penalties to impose — whether in the form of fees and fines, in lowering the fines below statutory minima, eliminating fines altogether, or imposing alternatives such as community service or traffic school. The Fines

& Fees Justice Center has done tremendous empirical work¹⁷ documenting how fines and fees and other aspects of traffic courts affect people's lives. Weinstein-Tull brings traffic courts into the scholarly discourse.

Having mapped out the traffic court lay of the land, Weinstein-Tull sets out to determine if traffic courts do justice and how one would determine such a thing. On one hand, he finds, they embrace high degrees of localism, which can be especially responsive to communities. On the other hand, Weinstein-Tull acknowledges “a deep concern” that traffic courts’ “simplified rules, expanded judge discretion, diversity, and infrequent oversight” can work against defendants’ interests “and create the possibility that traffic court operations will dip below basic, constitutional rights floors.”

Wide discretion enables a judge to be particularly lenient with the driver, who, for example, was rushing to take her pregnant wife to the hospital.¹⁸ But it also creates no checks for bias or other now well-documented injustices

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wrought by traffic policing. Indeed, Weinstein-Tull's interviews reveal that traffic court judges do not consider evaluating racial discrimination claims as part of their job. Moreover, these judges exercise this discretion with effectively no oversight — virtually no appeals, no media attention, and no lawyers in the courtrooms to observe, let alone constrain, judges as they mete out fees, fines, punishment, or lenity.

At the end of the article, Weinstein-Tull invites us to think about how traffic courts inform our conception of civil justice in this country. He asks, "What exactly is traffic court?" Like other state civil courts, traffic courts defy conventional notions of courts that are so deeply rooted in our experiences (as lawyers and law professors) that overwhelmingly focus on federal courts. They are more diverse, more informal, and less grounded in law than federal court. They share these traits with other state civil courts,¹⁹ with the local courts Weinstein-Tull has discussed in other work,²⁰ and with the criminal municipal courts

that Alexandra Natapoff has documented.²¹ They also share traits with state and local administrative agencies. The massive caseloads and the lack of meaningful oversight leads Weinstein-Tull to suggest that traffic courts ought to be treated like administrative agencies for oversight purposes — monitored by regular audits and practices like the "secret shopper" method (in which researchers pose as users of the system) — rather than relying on judicial review.

I would ask a different but related question — what are traffic courts for? Are they civil or criminal? Are they intended to develop law (surely not),²² raise revenue, resolve factual disputes, enforce traffic safety, punish bad drivers, or discourage unreasonable speeding? One could imagine a state auditing traffic courts to ensure they collected sufficient fees and fines to fund the public fisc, or to ensure that traffic policing did not have a disparate racial impact or impose excessive punishments for drivers of color. These are very different audits. They raise questions not only about the

importance of these courts, which are pervasive in our society, but also about the state and the role of civil justice. To determine whether traffic courts are mismatched to their purpose, one must identify what their purpose is. And the answer to that question, like their procedures and organizational structures, also may vary across the country. All the more reason for us to recognize the importance of these courts and to continue to study them — which is precisely Weinstein-Tull's admirable call to arms.



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¹ This article was previously published online in *Jotwell*. See Pamela Bookman, *Traffic Courts and Civil(?) Justice*, JOTWELL (June 13, 2023) (reviewing Justin Weinstein-Tull, *Traffic Courts*, 112 CAL. L. REV. ___ (forthcoming, 2024)). It has been slightly edited for inclusion in *Judicature*.

² Court Statistics Project, CSP Stat Overview, Composition, <https://www.courtstatistics.org/court-statistics/interactive-caseload-datadisplays/csp-stat-nav-cards-first-row/csp-stat-overview>.

³ See, e.g., Symposium, *The Other 98%: Racial, Gender, and Economic Injustice in State Civil Courts*, 122 COLUM. L. REV. 1165 (2022); Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022); Pamela K. Bookman & Colleen F. Shanahan, *A Tale of Two Civil Procedures*, 122 COLUM. L. REV. 1183 (2022); Diego A. Zambrano, *Missing Discovery in Lawyerless Courts*, 122 COLUM. L. REV. 1423 (2022).

⁴ *Supra* note 2.

⁵ *Id.*

⁶ United States District Courts — National Judicial Caseload Profile, Statistics & Reports, United States Courts, https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile

1231.2021.pdf (last visited Feb. 25, 2024).

⁷ Fines and Fees Justice Center, Personal Narrative: Andrew, <https://finesandfeesjusticecenter.org/articles/personal-narrative-andrew/>.

⁸ See Spencer Schneider, *The Wheels on the Bus: The Statutory Schemes That Turn Traffic Tickets into Financial Crises*, 77 NAT'L LAW. GUILD REV. 81, 81–82 (2020).

⁹ Fines and Fees Justice Center, Personal Narrative: Levi Lane, <https://finesandfeesjusticecenter.org/articles/personal-narrative-levi-lane/>.

¹⁰ See Lisa Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 1, 11–12 (2020) ("People of color are not only more likely to [be] subjected to traffic stops by law enforcement than White drivers, but they are more likely to be given a ticket and to receive multiple tickets than White drivers. For example, the Department of Justice found that when stopped for speeding, Black drivers are twenty percent more likely to get a ticket than White drivers, and Latinx drivers are thirty percent more likely than White drivers to be ticketed.")

¹¹ Justin Weinstein-Tull, *Traffic Courts*, 112 CAL. L. REV. ___ at 18 (forthcoming 2024).

¹² Anna E. Carpenter, Colleen F. Shanahan, Jessica

Steinberg & Alyx Mark, *Judges in Lawyerless Courts*, 110 GEO. L.J. 509 (2022).

¹³ Andrew Hammond, *Pleading Poverty in Federal Court*, 128 YALE L.J. 1478 (2019).

¹⁴ Sara Sternberg Greene and Kristen M. Renberg, *Judging Without a J.D.*, 122 COLUM. L. REV. 1287 (2022).

¹⁵ Conduct of the Hearing on the Infraction, Rule 14(b), Haw. Civ. Traffic Rules.

¹⁶ Uniform Rules on Civil Motor Vehicle Infractions, Trial Court Rule VII(b)(1), Mass. Trial Court Rules.

¹⁷ See *Clearinghouse*, FINES AND FEES JUST. CTR., <https://finesandfeesjusticecenter.org/clearinghouse/> (choose "Traffic Fines and Fees" in "Topics" filter).

¹⁸ Weinstein-Tull, *Traffic Courts*, 112 CAL. L. REV. ___ at 40.

¹⁹ Anna E. Carpenter, Alyx Mark, Colleen F. Shanahan and Jessica K. Steinberg, *The Field of State Civil Courts*, 122 COLUM. L. REV. 1165 (2022).

²⁰ Justin Weinstein-Tull, *The Structures of Local Courts*, 106 U. VA. L. REV. 1031 (2020).

²¹ Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021).

²² Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark and Anna E. Carpenter, *Lawyerless Law Development*, 75 STAN. L. REV. ONLINE 64 (2023).