THE TRAFFIC CODE : WHAT FOR ?
(A study in the sociology of law)

For the last twenty-old years, the primary goal of policies pertaining to road traffic has been the reduction of the number of accidents. Control measures to that effect, taken in the 1970s, which punish drinking and driving and exceeding speed limits, generated a tremendous case load. To relieve the courts, legislators voted the 30 December 1985 law making certain offences minor ones, and extending the sphere of application of flat-rate fines and *ordonnances pénales*[1]. Later, for the same reasons, legislators voted the 10 July 1989 law establishing the penalty point system.

These legislative interventions were accompanied by a denunciation of the powerlessness of the control system to further enforce safety on the roads. In an attempt to determine the role of criminal law with respect to road traffic, the CESDIP has inquired into both the functioning of the control system[2], and how the traffic code is produced.

The code was promulgated by an *ordonnance*[3] dated 15 December 1958. At a time when the rising tide of motor vehicles caused traffic issues to revolve around managerial problems, it is noteworthy that this text created a check on drivers' alcohol consumption, and authorized judges to withdraw drivers' licences.

To achieve an understanding of the issues behind this special criminal law code, it was necessary to determine the actors, groups and institutions behind the traffic code, to identify their concerns and their means of action. This was done by examining the ministerial and parliamentary archives and analysing both the lay and the professional press.

These various sources indicate that the stakes behind the traffic code fluctuated with time, and sketch a picture of the process which led legislators to promulgate a text whose objectives differed from what they originally proposed to achieve.

A CODE WITH MANY ORIGINS

Because of the *ordonnance* procedure used, the code was the final legal form given to a bill drafted by the ministry of Transportation and which had been left on desks of the Chamber of Representatives since 1948.

The project had been drawn up outside of the official spheres where bills are generally drafted, by actors who were not legally trained professions for the most part.

1 - A rapid, simplified form of judgement, with no debate and a fine as the only sanction ; should an offender disagree with this decision, he may chose to appear before a police court.

2 - In this perspective, Pérez-Diaz (C.) and Lombard (F.), have analysed the practices of agents of the control apparatus ; Cf. Pérez-Diaz and Lombard, *Les contraventions routières : de la constatation à l'exécution des sanctions*. CESDIP, 1992. Déviance et contrôle sociale, n° 57.

3 - In specific circumstances, the French Constitution gives the government legislative power, pending Parliamentary ratification ; these "laws" are called *ordonnances.*

Protection of the highway infrastructure

The unavoidable growth of road traffic, for the transportation of freight in particular, was revealed by World War II, with the partial destruction of the railway system. The technical evolution raised the problem of adapting the new characteristics of trucks to the existing regulations.

In 1943, the French truck-makers' organizing committee had decided to launch a series of heavy trucks whose size exceeded the norms prescribed by the regulations of the time. The objective was post-war competitivity with other European truck-builders. In fact, the increased size of trucks and the habit of overloading them with freight was harmful to the infrastructure and the highway system of the time, which was already greatly deteriorated, in addition, these practices threatened the preeminence of the railroads over road traffic.

The Bridges and Highways (*Ponts et Chaussées*) administration was intent on taking commercial vehicles in violation of the norms for weight and length off the road, once peace had been re-established, for two reasons : to minimize upkeep of the highway network and to protect the railways' participation in the shipping of freight. There was nothing in positive law that allowed it to do so, however, and this administration therefore decided to rewrite the existing legislation on road traffic - a law dating back to 30 May 1851 on controlling haulage and the parcel post.

A working group of experts from the ministry of Transportation - the central commission on automobiles and traffic in general - was asked to prepare a traffic code, on which it worked from 1943 to 1947. The group included a number of engineers from the ministry of Transportation, specialized in Bridges and Highways and Mines, a member of the *Conseil d'Etat*[4], representatives of the Justice and Interior ministries, and from 1946 on, of the ministry of Public Health. There were also representatives of the organizing committees of builders and road shippers, of the railway system (SNCF), and of such associations as the Automobile Club of France and the *Union Routière* (Road Union). To some extent, the latter were defending the interests of other specific professional groups such as automobile mechanics and gas station owners, along with those of road-users.

The rewriting of the traffic code had been conditioned by financial interests ; the open defence of these, and of their right to control the transportation of freight, was actually a means used by the Bridges and Highways in support of their control over automobile traffic.

Other stakes came to play as time went by, because of the evolution of positive law.

4 - Supreme Court for lawsuits against the State ; it functions at the same time as a legal counsel for the government.

Controlling alcohol abuse

While the Central commission on automobiles was drafting its bill on policing traffic, the ministry of Health, in a completely different context, was working, in 1943-44, on its own bill, aimed at punishing excessive drinking, and drunken driving in particular, for public health purposes. A number of obstacles, both political/economic (the control of alcohol abuse, which was the object of the text, was a delicate issue) and legal (the text infringed on personal freedom of action and movement) got in the way of the law-making process. In 1946, the ministry of Public Health took advantage of the work being done by the ministry of Transportation to introduce its own demands. Whence a new definition of the "problem", tailored to fit the bill being drafted. The control of drunken driving was then depicted as part of the efficient management of the traffic problem. The result was a modification of the formulation of the bill.

At the close of the second world war, the management of highway traffic was not a crucial issue for the political world, however. Consequently, the co-authors of the traffic code were unable to obtain a public discussion of their text during the first two terms of office of the Fourth Republic (between 1946 and 1956).

A campaign to legitimate the policing of highway traffic politically had been undertaken, notwithstanding.

SAFETY ON THE ROADS, A "SOCIETAL PROBLEM"

The early 1950s witnessed a reorganization of the fleet of vehicles. The automobile had become a means of bolstering the economy. Henceforth, growing numbers of increasingly powerful cars composed most of the traffic. This was further abetted by the fact that the ministry of Transportation kept a close check on the freight-shipping situation.

The traffic conditions - intense traffic and the poor state of the highway network - contributed to a spiralling curve of accidents over the years.

Construction of the problem of safety on the roads

In these years - the 50s - insurance companies, which had financial difficulties of their own, were opposed to compulsory insurance, for fear that it would cause many more claims to be filed, and attract State control of their sector. It was in fact they who blocked the institution - parallelled and accelerated by the nationalization of certain companies - of compulsory insurance. Since a cut in the number of accidents was nonetheless in the best interest of insurers, they supported the government's coercitive traffic-policing policy.

To legitimate this policy, the insurance companies launched a campaign to promote safety on the roads. Between 1950 and 1958, they defined lack of safety on the roads as a societal problem. While they filled the media with figures defining insecurity on the roads, the medical profession pointed to drivers as primarily responsible for accidents. Representatives and senators, in turn, exhorted the government to implement a policy fostering safety on the roads, and to create an interministerial agency for that purpose.

The legitimation process required the dramatization of insecurity on the roads : there was already talk, at the time, of a social scourge... This also involved moralizing action, and the stigmatizing of certain types of behavior, such as drunken driving and deliberately dangerous driving : "good" drivers were opposed to "bad" drivers.

The result was a gradual change in the targets of the projected traffic code : the original target, the freight-shipping industry, was replaced by individual drivers who deviated from the norm, who were not "normal", "reasonable", "family man" type drivers.

This modification, in turn, generated greater severity in the withdrawal of driving licences.

A context propitious to the judicial withdrawal of drivers licences

At the time, the prefect was allowed to suspend a driver's authorization following recommendation by a technical committee. A 29 August 1951 decree multiplied the cases in which drivers' licences might be withdrawn, and no longer automatically subordinated the pronouncement of this measure to the committee recommendation. Since these clauses were contested by associations of highway users, the ministry of Justice imposed court control of suspension of drivers' licences, on the basis of the argument that the justice system is in charge of protecting civil liberties.

Furthermore, the ministries of Public Health and of Transportation had succeeded in obtaining legal recognition of their interests, the former through the 15 April 1954 law on the treatment of dangerous alcohol abusers, the latter by the 10 July 1954 decree regulating traffic. As a result, the adoption of a traffic code was no longer a priority for those administrations after 1954. The ministry of Justice was thus able to cease playing the role of harmonizer and legal coordinator it had donned until then within the law-making process.

The ministry of Justice had been anxious, for some time, to provide judges with more extensive means of action, but the formal achievement of this was subordinated to a reform of the traffic regulations, which could only be instigated by the ministry of Transportation. But the latter, supported by automobile-drivers and teamsters' organizations, had no intention to relinquish its control on the confiscation of drivers' licences. It attempted to stall the judicialization of this measure, especially when the code began to be discussed in Parliament in connection with traffic security, at the close of the Fourth Republic, because the automobile had become a political issue by then.

This explains why judicial control over confiscation of drivers' licences was the only clause to be hotly debated on the parliamentary scene, the main issue being the advisability of making confiscation of the driver's licence a complementary sanction. The final decision was actually made by the ministerial offices when writing up the *ordonnance*.

In addition, the senators and representatives actually voted the options defined ten years earlier, although they aired some scepticism as to the ability of the coercitive solutions adopted to curtail the rise in accidents. They did view that particular criminal law as having a symbolic function, however : they were showing voters that they had done what was needed to combat traffic insecurity.

Their response to the problem was to ensure protection of the community by having drivers shoulder responsibility for security.

Inasmuch as it is individualistic, our legal system made this delegation of responsibility possible. The latter then actually became the sole true stake of the traffic code. Through legal formalism, the interests of heterogeneous sectors could be disguised as the defence of safe roads.

The process by which these interests were conglomerated may be roughly depicted as follows. The administration in control of the law-making process, the ministry of Transportation, was in no way concerned with public health matters or with citizens' rights in the face of the law. Regulation through criminal law was less costly for this agency than the modernization of the roadways, whence its extensive use of the justice system. However, the offences and sanctions demanded by the ministries of Justice and of Public Health were also potentially usable instruments for a road traffic policy focussing on the control of freight traffic. Withdrawal (either judicial or administrative) of a driver's licence meant taking the owner's vehicle off the road, if only temporarily. Similarly, by sanctioning drunken driving, certain categories of users of the roads might, hopefully, be neutralized.

Criminal law then became an instrument of government. Has it retained the virtues attributed to it by the ministry of Transportation some thirty five years ago ?

Anne Kletzlen

NOTE : This research was conducted at the CESDIP in the framework of a research subsidy. It was the object of a thesis presented in 1993 at the Université Paris-Sud (Jean Monnet Law School, Sceaux) : Le code de la route : pourquoi ? (Une étude de sociologie législative) *The traffic code : what for ? A study in the sociology of law*.

UNIVERSITE DE PARIS-SUD
FACULTE DE DROIT JEAN MONNET

LE CODE DE LA ROUTE : POURQUOI ?

(Une étude de sociologie législative)

THESE

pour l'obtention du Doctorat en Droit
Nouveau Régime

Droit privé et sciences criminelles

Tomes 1 et 2
---

présenté par
Anne KLETZEN

sous la direction de
Monsieur Philippe ROBERT,

Directeur de Recherche au Centre National de la Recherche Scientifique,
Directeur du Groupe Européen de Recherches sur les Normativités
---

Année de soutenance 1993