

## Bicycles and the Law: The Case of California

by Alan Wachtel

### I. Introduction

As a method of transportation, bicycling has remained popular for over a century. It is efficient, enjoyable, and healthful, and it also provides significant environmental benefits by reducing traffic congestion, noise, fuel consumption, and air pollution. Federal transportation policy under the Intermodal Surface Transportation Efficiency Act<sup>1</sup> now encourages alternative methods of transportation, and Federal and state air quality and congestion management mandates have made nonmotorized modes especially attractive. Greater physical activity can also make a substantial contribution to public health.

Of all the forms of government regulation, the most pervasive and intrusive in daily life is traffic law. Yet traffic law treats bicycling in an inconsistent and contradictory way. On the one hand, it places bicycles on an equal footing with motor vehicles, granting them the same right to use the roadway and demanding in return that they comply with vehicle law. Factually, from the standpoint of equity, safety, and traffic flow, this is the correct approach.<sup>2</sup> On the other hand, bicyclists are hemmed in by imprecise special laws that confuse motorists, police, courts, and bicyclists themselves as to their rights, responsibilities, and proper behavior. These inconsistencies pose a formidable obstacle to the encouragement and expansion of a socially advantageous mode of transportation. Nonetheless, bicycle issues have rarely been directly addressed in case law and have received meager attention in the legal literature.

This article examines the status of bicycles in current traffic law and offers recommendations for change.<sup>3</sup> It focuses on one of the most controversial issues: How far to the right must a bicyclist ride? This article will show that while traffic law ultimately takes a sensible view, generally according cyclists the same rights and responsibilities as drivers of vehicles, it does so in a roundabout and obscure way that is easily misconstrued. Clarifying the law would increase public respect for alternative modes of transportation, encourage potential bicycle commuters, and improve enforcement, traffic flow, and safety. Secondary effects might include enhanced public physical fitness, reduction in fuel consumption and traffic congestion, improved air quality, and the economic benefits of reduced expenditure, both public and private, on automotive facilities.

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Although these are important issues, most bicycle offenses are traffic infractions heard in Municipal Court, where the principles governing them virtually never become the subject of reported opinions. This is a source of great frustration to individual bicyclists who feel they have been cited unjustly,<sup>4</sup> or to those challenging existing or proposed restrictions. Because there are so few resources available, each time the battle must be fought again. The author hopes this article will help to redress the imbalance.

## **II. Principles of Traffic Regulation**

### **A. The State Preempts Local Regulation of Bicycle Traffic**

Is it enough to look at state law, which is uniform over a wide area, or do we need to examine local laws, which can vary widely from place to place? Under the California Constitution, the powers of counties<sup>5</sup> and cities<sup>6</sup> are provided by the Legislature. Counties and cities may make and enforce police regulations not in conflict with general laws.<sup>7</sup> In the case of traffic law, however, there is such a conflict. The California state law preempts the entire field of traffic control in the California Vehicle Code:

Except as otherwise expressly provided, the provisions of this code are applicable and uniform throughout the State and in all counties and municipalities therein, and no local authority shall enact or enforce any ordinance on the matters covered by this code unless expressly authorized herein.<sup>8</sup>

The operation of bicycles on highways is regulated by the state under the provisions of the Vehicle Code.<sup>9</sup> Thus bicycle operation is among "the matters covered by this code," and all local regulation is preempted except where expressly authorized. None of the authority delegated by the Legislature in the Vehicle Code permits local regulation of bicyclists on conventional roads.

### **B. Bicyclists Must Obey Traffic Laws**

Because "vehicle" does not include a device moved exclusively by human power,<sup>10</sup> a bicycle is not a vehicle for purposes of traffic law.<sup>11</sup> However, in many respects bicycles are treated as if they were vehicles. By statute, "Every person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle by this division,... except those provisions which by their very nature can have no application."<sup>12</sup> The law thus accommodates the vehicular-cycling principle, accepted and practiced by experienced bicyclists, that cyclists should act and be treated as drivers of vehicles.<sup>13</sup>

The language of Cal. Veh. Code § 21200 demands close attention. What is a "provisio[n] applicable to the driver of a vehicle" (or, equivalently, to a "driver"<sup>14</sup>)? Clearly, if a provision referenced by this section applies to all drivers, then it also applies to all persons riding a bicycle upon a highway. But what about a provision that applies only to drivers of

certain types of vehicles?<sup>15</sup> Does such a provision also apply to bicyclists? The answer must be that it does not, because it would be impossible to determine whether bicyclists should be classed with the drivers of vehicles who are subject to the provision or with those who are not.<sup>16</sup> By the same token, provisions that apply only to certain types of drivers<sup>17</sup> do not automatically apply to bicyclists.<sup>18</sup>

### III. What Roads May a Bicyclist Ride On?

The streets, roads, and highways of California are for the benefit of all citizens, and any local attempt to restrict traffic is disfavored:

The use of highways for purposes of travel and transportation is not a mere privilege, but a common and fundamental right, of which the public and individuals cannot rightly be deprived.... All persons have an equal right to use them for purposes of travel by proper means, and with due regard for the corresponding rights of others.<sup>19</sup>

Absent express authority, localities may not determine which traffic shall and shall not use streets.<sup>20</sup> A bicyclist "has all the rights" of the driver of a vehicle<sup>21</sup>; moreover, bicycle riders have the same right as automobile drivers to the use of streets.<sup>22</sup> Other road users often fail to recognize this fundamental principle (and so do police and courts). It was well expressed by the Supreme Court of Minnesota as early as 1894:

A bicycle is a vehicle used now very extensively for convenience, recreation, pleasure, and business, and the riding of one upon the public highway in the ordinary manner as is now done is neither unlawful nor prohibited, and they cannot be banished because they were not ancient vehicles, and used in the Garden of Eden by Adam and Eve.<sup>23</sup>

The California courts have said, more prosaically, "A bicycle... is recognized as a legitimate means of traveling upon the highways or streets of a city either for business or pleasure."<sup>24</sup>

As a direct consequence of Cal. Veh. Code § 21200 and the holdings cited above in *Rumford v. City of Berkeley*,<sup>25</sup> *Hunt v. Los Angeles Ry. Corp.*,<sup>26</sup> and *Flury v. Beeskau*,<sup>27</sup> bicyclists are entitled to travel on all roads except those that are lawfully prohibited to them.<sup>28</sup> Motorists are frequently unaware of this principle, and sometimes react with anger--and occasionally with belligerent actions--when bicyclists "intrude" onto "their" roads. This response is especially likely when a separated bike path is available nearby.

Many motorists do not know that legally, bicyclists on conventional roadways are never required to use a separated path, or even a shoulder.<sup>29</sup> Further, there are persuasive reasons why cyclists prefer the roadway. Like other travelers, bicyclists want to reach their destinations safely, conveniently, and with minimum delay. Paths are often indirect and disconnected; they fail to serve the cyclist's destination; they may be poorly designed and maintained; and they are

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usually shared with pedestrians. The roadway has none of these drawbacks. Nor are sidewalks or paths adjacent to a roadway safer than the road, as noncyclists and even many cyclists believe. Bicycle riders on sidewalks parallel to arterial streets have been found to suffer bicycle-car collisions 1.8 times the rate of those on the adjacent roadway (because of blind conflicts at intersections and the promotion of wrong-way travel).<sup>30</sup> The conclusion that parallel paths are undesirable is accepted as fact in existing standards for bikeway design.<sup>31</sup> In any case, almost every bicycle trip must at some point use roadways shared with motorists, because the roadway system serves nearly every origin and destination, while bicycle facilities do not and cannot.

Bicyclists, too, may be unaware of their right to use the roadway, ignorant of its advantages, or intimidated by belligerent motor vehicle traffic. As a result, bicyclists may be unwilling to exercise their rights under the law. A clearer statement of the law would lead to greater respect for bicyclists' rights.

#### **IV. How Far to the Right Must a Bicyclist Ride?**

As long ago as 1975, the California Statewide Bicycle Committee, created by resolution of the Legislature,<sup>32</sup> considered the law dealing with bicyclists' physical position on the roadway. The committee found that this law "has caused more confusion and frustration among motorists, bicyclists and law enforcement agencies than any other bicycle section in the California Vehicle Code. It is apparent that interpretation and enforcement of this section by local police agencies is not uniform throughout the state."<sup>33</sup> Many bicyclists would agree that this situation continues to hold true today.

Adherence to traffic law, including taking the proper position on the roadway, is crucial to bicyclists' safety and to traffic flow. Yet the expectations of casual cyclists and noncyclists on how bicyclists should behave are usually very different from those of experienced cyclists. The confusion noted by the Statewide Bicycle Committee lies primarily with law enforcement officers and courts, who frequently misunderstand the plain language of the statutes; the frustration, in consequence, lies with bicyclists. Almost every experienced bicyclist has a story of being harassed or cited by a police officer for not traveling far enough to the right.<sup>34</sup> Moreover, bicyclists routinely deal with belligerent comments by and close calls with angry motorists who misunderstand bicyclists' legal and common-sense reasons for riding where they do.

In the construction of a statute, the intention of the Legislature is to be pursued if possible.<sup>35</sup> The Statewide Bicycle Committee's report provides the only clues we have to the Legislature's intention as to bicyclists' roadway position.<sup>36</sup>

## A. Roads Without Bike Lanes

Two distinct rules govern bicyclists' roadway position. The first is that all traffic on the highway, including bicycles, must drive on the right half of the roadway<sup>37</sup>; the second is that slower traffic, including bicycles, must keep farther to the right.

*Albrecht v. Broughton*<sup>38</sup> illustrates how the two rules can be confused. In that case, a bicyclist delivering newspapers initiated a left turn from the left side of the street and was struck and injured by a truck on the intersecting street. The trial court instructed the jury that if they found a violation of the requirement that bicycles be operated as near the right side of the roadway as practicable,<sup>39</sup> it would raise a rebuttable presumption of negligence. The appellate court affirmed that this was a correct statement of the law, and that there was evidence that if the bicyclist had initiated the turn from the right-hand side of the road the accident might have been avoided.

It was the first rule, not the second, that was violated in the *Albrecht* case: the bicyclist failed to initiate the turn from the right half of the roadway. It might, in fact, have been negligent for the bicyclist to follow the appellate court's understanding by initiating the turn from the far right of the roadway, since, in the absence of signs or markings indicating otherwise, left turns must be made as close as practicable to the left edge of the available half of the roadway.<sup>40</sup>

On two-way roadways without bicycle lanes,<sup>41</sup> traffic law provides:

Any person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at such time shall ride as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction.

(2) When preparing for a left turn at an intersection or into a private road or driveway.

(3) When reasonably necessary to avoid conditions (including, but not limited to, fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge, subject to the provisions of Section 21656. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.<sup>42</sup>

I will call this the "slow bicycle rule." Although the slow bicycle rule is popularly understood to require bicyclists to ride as far to the right as possible for their own safety, that interpretation is much too restrictive.

### **1. The Rule Also Applies to Motorists**

For one thing, a rule of exactly the same type applies to slow vehicular traffic, not only to bicyclists ("slow vehicle rule"):

Notwithstanding the prima facie speed limits, any vehicle proceeding upon a highway at a speed less than the normal speed of traffic moving in the same direction at such time shall be driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.<sup>43</sup>

The slow bicycle rule differs from the slow vehicle rule in only one significant way. Because a bicycle is narrower than an automobile, and need not always occupy an entire lane, bicyclists cannot comply merely by riding in the right-hand lane, but must ride as close as practicable to the right-hand edge or curb.<sup>44</sup> The language and effect of the two rules is otherwise identical.

### **2. The Rule's Purpose is to Facilitate Traffic Flow, Not Safety**

The slow vehicle rule primarily serves to facilitate traffic flow, not to promote safety. Its purpose is to require the operator of the slower vehicle to keep to the right in order to allow faster vehicles unobstructed passage.<sup>45</sup> It is logical to conclude that the slow bicycle rule also serves primarily to facilitate traffic flow, not safety. Although casual bicyclists greatly fear overtaking accidents, such accidents are not a major cause of bike-car collisions.

A four-year study of bicycle-motor vehicle collisions in Palo Alto found that overtaking accidents, in which a bicyclist in the roadway was struck from behind by a motorist traveling in the same direction, accounted for only 5 of 314 bicycle-motor vehicle collisions.<sup>46</sup> Forester finds that car-overtaking-bike collisions make up about 10 percent of all car-bike collisions: 6 percent caused by the bicyclist swerving<sup>47</sup> and 4 percent caused by motorist error. Motorist-caused car-overtaking-bike collisions constitute only 0.3 percent of all cycling accidents.<sup>48</sup>

### **3. The Rule Applies Only to Bicyclists Traveling Slowly**

The slow bicycle rule does not apply to all bicyclists, but only to those traveling "at a speed less than the normal speed of traffic moving in the same direction at such time." Bicyclists moving at or above traffic speed, which is common on downhills or in slow urban traffic, are not subject to the requirement. "Normal speed of traffic" is a poorly defined concept

that leaves room for ambiguity. Where the traffic at a certain time consists predominantly of bicycles (as might be the case with a club ride on a lightly traveled road), it would be plausible to argue that their speed determines the normal speed at that time.<sup>49</sup>

#### 4. The Rule Provides Exceptions

Bicyclists must have latitude to use their own judgment in determining what is a safe road position, without fear of second-guessing by police officers or courts, because they are the ones who suffer the risk of error. The slow bicycle rule supports such judgment by providing exceptions in the slow bicycle rule for overtaking and passing, left turns, and conditions that make it unsafe to continue along the right-hand curb or edge, such as fixed or moving objects, surface hazards, and substandard width lanes.

Where a lane is too narrow for a following vehicle to overtake and pass a slower bicycle safely within the lane, the rule permits bicyclists to occupy the center of the lane. Although it may seem counterintuitive to noncyclists, this is the recommended practice, called "taking the lane."<sup>50</sup> It does not present any increased hazard to the bicyclist, since by assumption the lane is too narrow to share even when the bicyclist is as far to the right as

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possible. Taking the lane enhances safety by making the cyclist more visible and discouraging attempts to pass within a lane that is too narrow to allow safe passing. On a multilane road, overtaking traffic can still pass by using the adjacent lane; on a two-lane road, overtaking traffic can pass by changing lanes if visibility and oncoming traffic permit.

Under some conditions, such as a winding or hilly two-lane country road where visibility is restricted, overtaking traffic may be temporarily unable to pass. Thus, these narrow roads are a significant source of friction between motorists and bicyclists. Broader understanding by motorists of bicyclists' motivations and the legal rationale for their actions would help to reduce this friction.

The virtue of the list of exceptions to the slow bicycle rule is that it calls attention to situations that police or courts might not otherwise recognize. The defect is that only a finite number of exceptions are enumerated. Police and courts tend to discount others, even though, by the statute's own words, the list of exceptions is illustrative but not inclusive.<sup>51</sup>

As a matter of bicyclists' safety, exceptions to the slow bicycle rule need to be interpreted broadly. For instance, an experienced bicyclist would generally move away from the edge of the road when approaching an intersection, in order to avoid the danger of being

trapped and struck by overtaking right-turning vehicles. This right-turn conflict, although not enumerated in the statute, qualifies as a condition that makes it unsafe to continue near the edge, and the movement is therefore implicitly permitted.<sup>52</sup>

### 5. Bicyclists Are Not Required to Ride on the Shoulder

The slow bicycle rule applies only on the roadway. Bicyclists, even slow ones, are never required to ride on the shoulder (or on sidewalks or bike paths) rather than on the roadway. The only exception occurs where bicycling on the roadway is prohibited on freeways and toll bridges.<sup>53</sup>

### 6. "Practicable" is a Flexible Term Favorable to Bicyclists

Bicyclists need only ride "as close as practicable to the right-hand curb or edge." There is no California case law interpreting this critical phrase in the slow bicycle rule, but there are several cases construing identical language in an identical context in the slow vehicle rule (including one applying the rule to a bicycle<sup>54</sup>). For internal consistency and harmony among the statutes, this language must be given the same meaning whether its subject is a bicyclist or a motorist.<sup>55</sup> These cases make it clear that "as close as practicable" is a highly flexible directive, varying widely according to conditions; that positions well away from the edge of the road can still be in compliance; and that there is no violation of the slow bicycle rule if traffic is free to overtake and pass.

When a bicyclist is struck while "taking the lane," liability is a case- and fact-specific inquiry, with neither the driver nor the cyclist receiving priority. For example, in *Green v. Pedigo*, an automobile driven by Pedigo struck and killed bicyclist Green. In an action for damages, Pedigo alleged contributory negligence as a matter of law because Green was riding at or near the center of the road, in violation of the slow vehicle rule (which at that time applied directly to bicyclists). The court held that before negligence could be inferred, the whole situation as to the condition of the streets, traffic, convenience, and number of vehicles passing would have to be taken into account.<sup>56</sup> The court also agreed that there was no negligence as long as following traffic was free to overtake and pass.<sup>57</sup>

Similarly, in *Mauchle v. Panama-Pacific International Exposition Co.*, the court said of a hand-cart that had been struck from behind by an automobile that "The provisions of the law are elastic. They do not attempt to lay down a definite and rigid rule as to the distance which the slowly moving vehicle must keep from the curb."<sup>58</sup> *Shannon v. Thomas* found clear legislative intent of elasticity, and concluded that "[W]hat a person of ordinary prudence would have done under similar circumstances can be considered a practicable compliance with the law."<sup>59</sup>

"As close as practicable" has a different meaning as used in this section from "as close as possible."<sup>60</sup> What is practicable is a question of fact.<sup>61</sup> Hill's treatise on bicycle case law



finds that "What constitutes a practicable distance depends on the circumstances...[T]he appellate courts have given the practicable distance rule scant effect. Generally the concept is not mentioned at all."<sup>62</sup>

Proper position on the roadway is therefore not fixed but varies with conditions. It is a question of fact for the jury and trial court, and also for expert testimony, since the practices of experienced and knowledgeable bicyclists often differ significantly from those of novices. As with the exceptions provided for hazardous conditions, bicyclists must have latitude to use their own judgment on the spot.

As a sound practice, Forester<sup>63</sup> recommends that on wide roads, bicyclists should ride just outside the actual traffic lane, about three feet from the cars. This position affords overtaking traffic enough room to pass. On narrow roads,<sup>64</sup> bicyclists should ride generally just inside the traffic lane. Cars can then pass by moving partly into the adjacent lane on a multilane road, or partly into the opposing lane on a two-lane road with good sight distance and little oncoming traffic.<sup>65</sup>

There are disadvantages associated with riding too far to the right: in addition to car doors opening and a greater likelihood of encountering a rough surface or debris, "If...cyclists...always ride as near to the right edge of the roadway as possible, they will then find that the already-substantial hazards of motor vehicles coming from each side, from ahead and turning left, and from behind and turning right are substantially increased."<sup>66</sup>

In determining how much room a bicyclist is permitted to occupy, what *People v. Hahn* said of pedestrians is also true of bicyclists:

[His] right of way is not to be measured in fractions of an inch nor tested by split seconds. He is entitled not to just as much space as his body, clothes and buttons require, but to as much as will afford him a safe passage.... The pedestrian's heart, as well as his body, should be free from attack.

## **7. What Constitutes a Violation?**

There are four essential elements to a violation of the slow bicycle rule, or the analogous slow vehicle rule:

- (1) The bicyclist is traveling "at a speed less than the normal speed of traffic moving in the same direction at such time."
- (2) It would be "practicable" for the bicyclist to travel farther to the right (allowing reasonable room for individual judgment).

(3) None of the exceptions provided in the statute apply. Note, however, that "[C]onditions ... that make it unsafe to continue along the right-hand curb or edge"<sup>67</sup> should be interpreted broadly, to allow reasonable cyclist discretion.

(4) Faster traffic cannot overtake and pass, even by changing lanes or partially or fully crossing the centerline (where permitted and safe). It seems fair to say that this is the gravamen of the offense. The purpose of the rule is to facilitate the flow of traffic by allowing passing; if there is no other traffic, if traffic does not need to pass the bicycle,<sup>68</sup> if traffic can pass freely, or if traffic could not pass even if the bicyclist were farther to the right, there is no offense.<sup>69</sup> Hill says, "Obviously the practicable distance rule has no practical application" unless cars are attempting to pass the bicyclist.<sup>70</sup>

## B. Roads With Bike Lanes

Local authorities may establish bicycle lanes separated from any vehicular lanes upon highways.<sup>71</sup> These lanes must comply with design requirements authorized by the Streets and Highways Code, including requirements for width, striping, and signing.<sup>72</sup> Bicycle lanes are established within the paved area of highways, and are distinct from shoulders, bicycle paths, and sidewalks.<sup>73</sup>

Where bicycle lanes exist, the slow bicycle rule is replaced by the "bike-lane rule."<sup>74</sup> The bike-lane rule and the slow bicycle rule are nearly identical in wording. The one substantial difference is that on roads without bike lanes, as discussed earlier, slow bicycles must ride as close as practicable to the right-hand curb or edge of the roadway, while on roads with bike lanes it is both necessary and sufficient to ride in the bike lane.<sup>75</sup> The exceptions given in the bike-lane rule are less detailed, but "conditions ... that make it unsafe to continue along the right-hand curb or edge" in the slow bicycle rule are clearly analogous to the "hazardous conditions" in the bike-lane rule.

Just as experienced bicyclists generally move away from the edge of the road when approaching an intersection, in order to avoid conflict with overtaking right-turning traffic, they are also likely to move out of the bike lane.<sup>76</sup> This potential conflict is a "hazardous conditio[n]" that compels the bicyclist to leave the lane. In practice, the position bicyclists choose on the road depends primarily on lane width, lane destination, and surface conditions, and is largely independent of whether a bike lane is marked; thus they recognize a similar set of exceptions in both cases.

## C. Riding Single File or Two or More Abreast

Nothing in California law explicitly requires bicyclists to ride single file or prevents them from riding two or more abreast, as bicyclists often do for social reasons.<sup>77</sup> Nonetheless, some police officers believe that the slow bicycle rule does so implicitly, because the bicyclist on the

left is not riding "as close as practicable to the right-hand curb or edge of the roadway." This opinion is also expressed in a 1975 Attorney General's letter of advice to the Statewide Bicycle Committee, without further elaboration.<sup>78</sup>

This interpretation lacks reason, common sense, and harmony.<sup>79</sup> In the strictest sense, the bicyclist on the left cannot ride farther to the right, because of the presence of the bicyclist on the right. In an analogous situation, on a road that carries three lanes of traffic in the same direction, it would surely be considered proper for two slower motor vehicles to travel abreast in the two right-hand lanes, leaving the left-hand lane open for faster traffic to pass. Riding two abreast is expressly permitted by both the slow bicycle rule and the bike-lane rule when one bicyclist is passing another, even if both are slower than other traffic. Finally, no law currently prevents a car and a bicycle, regardless of speed, from traveling abreast in a single lane wide enough to allow it.<sup>80</sup> It is therefore illogical to single out two bicycles side by side.

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If the slow bicycle rule is to be applied to the case of two cyclists side by side, it must meet the tests described under "What Constitutes a Violation?" *supra*. Clearly the rule cannot apply unless both cyclists are traveling slower than other traffic; if not, they may ride two or more abreast. Nor does the slow bicycle rule apply in a narrow lane, so riding two or more abreast is lawful there.

The slow bicycle rule should apply only when faster traffic is unable to overtake and pass.<sup>81</sup> If traffic can pass by changing lanes, or if it could not pass even if the bicyclists were riding single file, there should be no violation. If bicyclists ride two or more abreast, but revert to single file to allow following traffic to overtake, again there should be no violation.

Regardless of how the slow bicycle rule is interpreted, bicyclists may lawfully ride two or more abreast on the shoulder, because the shoulder is not part of the roadway, and therefore not subject to the slow bicycle rule.<sup>82</sup> Likewise, bicyclists may ride abreast, one on the roadway and one or more on the shoulder, provided that the one on the roadway observes the slow bicycle rule, if applicable.<sup>83</sup> Finally, bicyclists may ride two or more abreast in a bike lane; the special bike-lane rule, if applicable, requires at most that they ride within the bike lane, without specifying any particular position in it.

#### **D. Bicyclists May Ride on the Shoulder**

Where the shoulder of the road is wide, smooth, and clean, and the adjacent lane is narrow, bicyclists generally prefer to ride on the shoulder, although the law does not require it.<sup>84</sup> On the contrary, bicycles, like vehicles, seem to be prohibited from traveling on the

shoulder and required to use the roadway instead.<sup>85</sup> Unlike heavy vehicles, however, bicycles do not damage the shoulder structure, and there are safety and traffic flow benefits to permitting them to ride there. To codify the practice of riding on the shoulder, in 1988 the California Legislature enacted a provision<sup>86</sup> that "this section<sup>87</sup> does not prohibit the operation of bicycles on any shoulder of a highway."<sup>88</sup>

## V. Recommendations

Traffic law exists to promote safe and orderly traffic flow. The law, like traffic flow itself, should be simple, clear, and predictable. Because bicyclists are an easily forgotten minority in an age when most people equate transportation with automobiles,<sup>89</sup> because bicyclists are more vulnerable to injury than motorists, and because bicycling offers significant benefits to society at large, it is especially important for the law to treat bicyclists fairly. It does not do so today.

As this article shows, traffic law, if properly understood, generally leads to reasonable conclusions regarding bicycles. The trouble lies with the difficulty in understanding and carrying out the law. There is no rational basis for the current distinction between bicycles and vehicles.<sup>90</sup> This distinction is not only confusing in itself, but leads directly to superfluous special regulations for bicycles, such as the slow bicycle rule and the bike-lane rule. These superfluous regulations, in turn, are readily subject to misunderstanding and misinterpretation by police, courts, and motorists, who cannot be expected to carry out the detailed analysis contained in this article. Special regulations also tend to relegate the bicycle to second-class status, encouraging motorists to view bicyclists as unwelcome intruders on the road.

Nonetheless, it would be a mistake simply to amend California law to define bicycles as vehicles. The distinction serves an indispensable if tangential purpose: because bicycles are not vehicles, localities cannot use their authority to prohibit certain vehicles from particular streets<sup>91</sup> as justification for banning bicycles. If localities were given this authority, they could easily discriminate against bicycles in favor of automobiles, and exile bicycles to dangerous and inconvenient separated paths (giving bicyclists' "safety" as the justification).<sup>92</sup> If bicycles are ever to be defined as vehicles, bicyclists' right to share the roadway must be expressly preserved.

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Like motorists, bicyclists require flexibility in reacting to traffic conditions. The slow bicycle rule and the bike-lane rule, which on their face seem to restrict bicyclists' movements to the right-hand curb or edge of the roadway or to a bike lane, attempt to supply this flexibility by incorporating numerous exceptions to those restrictions. A bill currently before the California Legislature adds another exception to both rules. The rules would not apply "When the right lane is marked by

appropriate signs or markings solely for a right turn, and an additional lane is available to proceed straight ahead. In this case, the person may proceed by using the lane farthest to the right that is not marked for a right turn."<sup>93</sup>

It can be argued that the new exception would be a useful one; it can be argued that its language needs to be clearer; it can also be argued that existing language is sufficient.<sup>94</sup> But the mere existence of the slow bicycle rule and the bike-lane rule leads to the incorrect presumption that they must differ in some important way from the slow vehicle rule. As this article has discussed, that presumed difference is often construed to the cyclist's disadvantage. The most effective way to eliminate such misinterpretation would be to eliminate the slow bicycle rule and the bike-lane rule altogether. In the absence of special laws, bicycles would become subject to the general slow vehicle rule,<sup>95</sup> and there would be greater understanding of their place on the roadway.<sup>96</sup>

### Appendix. Definitions

This appendix provides definitions for relevant terms in traffic law.<sup>97</sup>

A "highway" is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.<sup>98</sup> Highway includes street.<sup>99</sup> "Street" is defined in the same way as "highway," and includes it.<sup>100</sup>

A "roadway" is that portion of a highway improved, designed, or ordinarily used for vehicular travel.<sup>101</sup> "Roadway" is not synonymous with "highway."<sup>102</sup> The highway covers not only the portion used for vehicular travel but also that for pedestrian travel,<sup>103</sup> and may include, for example, soundwall, retaining wall, fence, safety railing, ditch, dirt, sidewalk, landscaping, shoulder, bicycle path, and bicycle lane in addition to the roadway. The "sidewalk" is that portion of a highway, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.<sup>104</sup>

A "freeway" is a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.<sup>105</sup> Notice that this definition differs from the conventional one of a divided highway with complete control of access and full grade separation at intersecting roads.<sup>106</sup>

"Shoulder" is not defined by California statute. However, California law prohibits the driver of a motor vehicle from passing on the right by driving off the paved or main-traveled portion of the roadway,<sup>107</sup> and case law and an Attorney General's Opinion refer to the area off the paved or main-traveled portion as the shoulder.<sup>108</sup> The shoulder is part of the highway but not of the roadway.<sup>109</sup>

A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used

exclusively upon stationary rails or tracks.<sup>110</sup> Clearly a bicycle is not a vehicle in this legal sense. A "motor vehicle" is a vehicle which is self-propelled.<sup>111</sup> Not all vehicles are motor vehicles: for example, pole or pipe dollies<sup>112</sup> and special mobile equipment<sup>113</sup> are vehicles but are not motor vehicles.

A "bicycle" is a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels.<sup>114</sup>

"Bikeway" means all facilities that provide primarily for bicycle travel.<sup>115</sup> The California Department of Transportation is authorized to establish recommended minimum general design criteria for the development, planning, and construction of bikeways and mandatory minimum safety design criteria for their construction,<sup>116</sup> including mandatory widths, striping, and signing. These criteria are contained in the Department of Transportation Highway Design Manual,<sup>117</sup> which refers to the authorizing statutes.<sup>118</sup> All local agencies having authority over, or responsibility for the development of, bikeways must utilize these minimum safety design criteria.<sup>119</sup>

"Class I bikeways" provide a completely separated right-of-way intended for the exclusive use of bicycles and pedestrians with crossflows by motorists minimized.<sup>120</sup> Class I bikeways are also referred to as bike paths<sup>121</sup> or bicycle paths.

"Class II bikeways" provide a restricted right-of-way designated for the exclusive or semiexclusive use of bicycles with through travel by motor vehicles or pedestrians prohibited, but with vehicle parking and crossflows by pedestrians and motorists permitted.<sup>122</sup> Class II bikeways are established for preferential use by bicycles within the paved area of a highway, and are also referred to as bike lanes<sup>123</sup> or bicycle lanes.<sup>124</sup>

"Class III bikeways" provide a right-of-way designated by signs or permanent markings and shared with pedestrians or motorists.<sup>125</sup> Class III bikeways are shared facilities, either with motor vehicles on the street, or with pedestrians on sidewalks, and are also referred to as bike routes<sup>126</sup> or bicycle routes. It is important to note that "bike path," "bike lane," and "bike route" refer to distinct types of facilities and are not interchangeable, and that these facilities in turn are different from shoulders and sidewalks.<sup>127</sup>

"Local authorities" means the legislative body of any county or municipality having authority to adopt local police regulations.<sup>128</sup>

A "vehicular crossing" is any toll bridge or toll crossing and its approaches, constructed or acquired by the Department of Transportation under the provisions of the California Toll Bridge Authority Act.<sup>129</sup>

"Traffic" includes pedestrians, ridden animals, vehicles, street cars, and other conveyances, either singly or together, while using any highway for purposes of travel.<sup>130</sup>

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## NOTES

1. Intermodal Surface Transportation Efficiency Act, 23 U.S.C. (1991).
2. The factual arguments are based on the author's 25 years and 100,000 miles of bicycling experience, primarily as a commuter. I will also cite as authority two works by John Forester, *Effective Cycling* (6th ed. 1993), and *Bicycle Transportation* (2nd ed. 1994). Forester is a cycling transportation engineer and educator who originated the Effective Cycling program, which teaches the ability to bicycle for pleasure, utility, or sport under all conditions of climate, terrain, and traffic. He also appears frequently as an expert witness in cycling cases.
3. Traffic law is primarily the province of the state. The analysis in this article applies strictly only to California, but substantially the same issues arise elsewhere. The Uniform Vehicle Code, a model vehicle code maintained by the National Committee on Uniform Traffic Laws and Ordinances, has adopted California's formulation of one important statute. See Unif. Veh. Code § 11-1205 (Nat'l Comm. on Unif. Traffic Laws and Ordinances 1992); compare Cal. Veh. Code § 21202. As a result, states that conform to the Uniform Vehicle Code in this matter follow laws similar to California's.
4. Including the author, who received a citation in 1978 for failing to weave in and out among parked cars near the curb. That citation marked the genesis of this article.
5. Cal. Const. art. XI, § 1(b).
6. *Id.* § 2(a).
7. *Id.* § 7.
8. Cal. Veh. Code § 21 (West 1987).
9. *Id.* div. 11 (West 1971, 1985 & Supps. 1995) (made applicable to bicyclists by *Id.* § 21200, *infra* note 12); *Id.* §§ 21200-21211 (West 1971 & Supp. 1995).
10. *Id.* § 670 (West 1987).
11. *Contra Wright v. Sniffin*, 68 Cal. App. 2d 358, 362 (1947) ("Clearly a bicycle is a vehicle").
12. Cal. Veh. Code § 21200 (West 1971 & Supp. 1995). The division referred to is *Id.* div. 11 (comprising §§ 21000-23336), headed "Rules of the Road." See also *Flury v. Beeskau*, 139 Cal. App. 398, 403 (1934) ("The traffic rules which are prescribed by the California Vehicle Act apply to bicycles..."); cf. *People v. Fong*, 17 Cal. App. 4th Supp. 1, 3 (1993) ("the clear legislative intent expressed in section 21200 was to make bicycles subject to the same rules of the road as motor vehicles.") The *Fong* court erred to the extent that it confused "vehicle" with "motor vehicle." The terms are not synonymous; See *supra* notes 10 and 11.

From 1943 through 1982, § 21200 and its predecessors read "has all the rights and is subject to all the duties applicable to the driver of a vehicle by this division," until the notorious *Clingenpeel* decision declared that, among other things, "duties" referred only to a civil duty of care, rather than to provisions of the Vehicle Code subject to criminal punishment. *Clingenpeel v. Mun. Ct.*, 108 Cal. App. 3d 394, 401 (1980). Because the statute has been amended accordingly, it would be superfluous to discuss the transparent fallacies of *Clingenpeel* here. It is worth remarking, however, that the term "rights" remains poorly defined. Although the Legislature's intent is clearly that bicycles be treated as vehicles by operators of other vehicles—e.g., that left-turning vehicles yield to bicycles as well as to vehicles under Cal. Veh. Code § 21801(a) (West 1971 & Supp. 1995)—this formulation, like that of "duties," is potentially subject to ambiguity, misunderstanding, and attack.

The Uniform Vehicle Code and many state vehicle codes retain the "rights and duties" formulation. See Unif. Veh. Code, *supra* note 3, at § 11-1202. So does the California statute regulating riders or drivers of animals (Cal. Veh. Code § 21050 (West 1971)).

13. John Forester, *Effective Cycling* 575 (6th ed. 1993) ("The vehicular-cycling view has some direct factual support and agrees with current traffic-engineering knowledge, with accident statistics, with analysis of driving skills, and with practical transportation and use.") Traffic law imposes order on a system that would otherwise be chaotic. It creates predictability, prevents and resolves conflicts, and moves traffic efficiently and safely. The methods by which it does this work equally well for vehicles and bicycles; any physical differences are usually irrelevant.
14. Cal. Veh. Code § 305 (West 1987) ("driver" is a person who drives a vehicle).
15. For instance, *Id.* § 21703 (West 1971) (following more closely than is reasonable and prudent) applies only to "the driver of a motor vehicle," not to drivers of vehicles in general.
16. Thus drivers of motor vehicles may not engage in contests of speed (*Id.* § 23109 (West 1985)); there is no such restriction on bicyclists. In addition, *Id.* § 21200 (West 1971 & Supp. 1995) provides an exception for "those provisions which by their very nature can have no application" to bicycles. An example might be the provision against traveling so slowly as to impede or block the normal and reasonable movement of traffic (*Id.* § 22400(a) (West 1971 & Supp. 1995)), inapplicable because a bicyclist might be physically incapable of traveling faster. A New Jersey court found that revocation of a driver's license for drunk driving offenses did not apply to bicyclists, because forfeiture of the right to operate a motor vehicle by its nature had no application to violations involving the operation of bicycles. *State v. Tehan*, 463 A.2d 403, 405 (N.J. Super.L. 1982).
17. That is, provisions that regulate certain drivers rather than certain vehicles.
18. But local authorities may not exclude certain classes of persons, such as non-residents, as opposed to classes of vehicles, from using local streets. *City of Lafayette v. County of Contra Costa*, 91 Cal. App. 3d 749, 755 (1979) (city exceeded its authority in closing road to nonresidents).
19. *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 550 (1982) (city exceeded its authority in erecting traffic barriers).
20. *Id.* at p. 554.
21. Cal. Veh. Code § 21200 (West 1971 & Supp. 1995). Compare *supra* note 12.
22. *Hunt v. Los Angeles Ry. Corp.*, 110 Cal. App. 456, 460 (1930) (negligence by bicyclist in collision with bus was question for jury).
23. *Thompson v. Dodge*, 60 N.W. 545, 546 (Minn. 1894) (bicyclist was not negligent merely because horse hitched to carriage became frightened).
24. *Flury v. Beeskau*, 139 Cal. App. 398, 403 (1934) (bicyclist was not negligent in collision with truck).
25. *Rumford v. City of Berkeley*, 31 Cal. 3d 545, 550 (1982); See *supra* note 19.
26. *Hunt v. Los Angeles Ry. Corp.*, 110 Cal. App. 456, 460 (1930); See *supra* note 22.
27. *Flury v. Beeskau*, 139 Cal. App. 398, 403 (1934); See *supra* note 24.
28. Bicyclists can be prohibited only from freeways and toll bridges. If all rights of access to a freeway, or a designated portion of it, have been acquired, then that portion may be prohibited or restricted to bicyclists by the Department of Transportation or by local authorities having jurisdiction (Cal. Veh. Code § 21960(a) (West 1971 & Supp. 1995)). Vehicular crossings (toll bridges) are ordinarily closed to bicycles, unless the Department of Transportation indicates by signs that bicycles are permitted (*Id.* § 23330 (West 1985)).
29. See "Bicyclists Are Not Required to Ride on the Shoulder" *infra*.
30. Wachtel and Lewiston, "Risk Factors for Bicycle-Motor Vehicle Collisions at Intersections," ITE J., Sept. 1994, at 30-35. Bicyclists on sidewalks often enter the roadway at intersections and driveways from an unexpected position and direction, such as the right side of overtaking right-turning traffic. Their approach may be obscured by parked cars, fences, and shrubbery. Bicyclists traveling against the direction of traffic flow, whether on the sidewalk or the roadway, are at greatly increased risk for accidents: because motorists normally scan for traffic traveling in the lawful direction, wrong-way traffic is easily overlooked. A motorist turning right at an intersection, for instance, scans to the left for approaching traffic on the new road, and cannot anticipate a wrong-way bicyclist approaching from the right.
31. See Cal. Dep't of Transp., *Highway Design Manual*, at Index 1003.1 (1993); Am. Ass'n of State Highway & Transp. Officials, *Guide for the Development of Bicycle Facilities* 22-23 (1991).
32. S. CON. RES. 47 (Cal. 1973). This ad hoc committee was charged with studying problems relating to bicycling in California, reviewing the California Vehicle Code and recommending changes that would benefit both bicyclists and motorists, and developing a Model Bicycle Ordinance for use by local jurisdictions. The committee was composed of representatives of nine groups, including the Department of Transportation, the Office of Traffic Safety, the California Highway Patrol, the Department of Parks and Recreation, the State Senate, the League of California Cities, the County Supervisors Association of California, the Automobile Club of Southern California, and the California Association of



Bicycling Organizations. There was also an advisory group of over 200 members. The committee delivered its final report in February 1975.

33. S. CON. RES. 47 Statewide Bicycle Committee, Final Report to the Legislature of 1975 $\text{\textcircled{D}}$ 76, at 6 (1975).

34. Including the author.

35. Cal. Code Civ. Proc. § 1859 (West 1983).

36. S. CON. RES. 47 Statewide Bicycle Committee, *supra* note 33, at 6-7. Observers of legislative proceedings, however, might agree that, as Thurber remarked of his drawings, they seem to reach completion by some other route than the common one of intent. James Thurber, "My Fifty Years with James Thurber," preface to *The Thurber Carnival* (1945). Thus intent is not always a fruitful avenue for analysis.

37. Cal. Veh. Code § 21650 (West 1971 & Supp. 1995) (with certain obvious exceptions such as one-way streets).

38. *Albrecht v. Broughton*, 6 Cal. App. 3d 173 (1970).

39. Cal. Veh. Code § 21202 (West 1971).

40. *Id.* § 22100 (West 1971).

41. Roads with bicycle lanes will be discussed *infra*.

42. *Id.* § 21202(a) (West Supp. 1995). This language has been incorporated into the Uniform Vehicle Code and adopted by a number of states, although others adhere to an earlier, more restrictive formulation that requires bicyclists always to keep to the right. Unif. Veh. Code, *supra* note 3, at § 11-1205(a).

43. Cal. Veh. Code § 21654(a) (West 1971 & Supp. 1995). The slow vehicle rule would also govern bicyclists, except that the special slow bicycle rule takes precedence. *See* Cal. Code Civ. Proc. § 1859 (West 1983) (a particular intent controls a general one).

44. Motorcycles are also narrow vehicles, but for simplicity the Vehicle Code treats them as if they occupy an entire lane. This fiction has negligible effect on traffic flow.

45. *See Green v. Pedigo*, 75 Cal. App. 2d 300, 307 (1946) ("[T]he section in question was enacted for the benefit of motorists traveling in the same direction." It does not appear that there was not plenty of room for free passage by appellant to either the left or right of the bicycle rider"); *Waxman v. Jennings*, 72 Cal. App. 671, 675 (1925) ("Its purpose is to require the operator of the more slowly moving vehicle to keep to the right in order to allow the more swiftly moving vehicle unobstructed passage"); *Mauchle v. Panama-Pacific Int'l Expo. Co.*, 37 Cal. App. 715, 719 (1918) ("It does not appear that there was not plenty of free room for passage"). *But cf. Christiansen v. Hollings*, 44 Cal. App. 2d 332, 228 (1941) ("The section... was passed for the benefit of the person so traveling as well as for the benefit of others rightfully on that side of the street.").

46. *Wachtel and Lewiston*, *supra* note 30.

47. Swerving would be an unsafe turn (Cal. Veh. Code § 22107 (West 1971)) or an unsafe lane change (*Id.* § 21658(a) (West 1971 & Supp. 1995)).

48. Including those not involving motor vehicles. *John Forester, Bicycle Transportation* 47, 52-54 (2nd ed. 1994); *John Forester, Effective Cycling* 271 (6th ed. 1993).

49. Under these circumstances there would be no offense under the slow bicycle rule even if faster traffic could not overtake. Nonetheless it is inconsiderate to block following traffic, and ordinary courtesy demands that the bicyclists revert to single file when traffic needs to pass.

50. *John Forester, Effective Cycling* 295, 297 (6th ed. 1993).

51. "[I]ncluding, but not limited to" (Cal. Veh. Code § 21202(a)(3) (West Supp. 1995)).

52. Where there is an exclusive right-turn lane, the bicyclist would move entirely to the left of the lane. Since a slow vehicle would also avoid a right-turn-only lane, this maneuver is implicitly permitted independent of any statutory list of exceptions.

53. Likewise, the slow vehicle rule does not require driving on the shoulder, but refers to the edge of the paved or ordinarily traveled portion of the highway (*Ketchum v. Pattee*, 37 Cal. App. 2d 122, 127 (1940)).

54. *Green v. Pedigo*, 75 Cal. App. 2d 300, 307 (1946), discussed *infra*.

55. Of course, the application of this meaning may differ. What is practicable includes, e.g., what a person of ordinary prudence would have done (*See infra* note 60 and accompanying text), but a prudent practice for a motorist may not be the same as a prudent practice for a bicyclist. For instance, the bicyclist may need to avoid surface hazards that are immaterial to a motorist.

56. *Green v. Pedigo*, 75 Cal. App. 2d 300, 307 (1946).

57. *Id.* ("[B]oth highways were free of other moving vehicles or pedestrians, and it does not appear that there was not plenty of room for free passage by appellant to either the left or right of the bicycle rider.").
58. *Mauchle v. Panama-Pacific Int'l Expo. Co.*, 37 Cal. App. 715, 719 (1918).
59. *Shannon v. Thomas*, 57 Cal. App. 2d 187, 197 (1943).
60. *Waxman v. Jennings*, 72 Cal. App. 671, 675 (1925).
61. *Christiansen v. Hollings*, 44 Cal. App. 2d 332, 339 (1941).
62. Paul F. Hill, *Bicycle Law and Practice* 99 (1986).
63. *See supra* note 2.
64. A narrow road means one whose outside lane is too narrow for a motorist to overtake safely in the same lane.
65. John Forester, *Effective Cycling* 294-295 (6th ed. 1993). Where the lane is so narrow that a motorist must use the next lane over, the bicyclist should ride down the center of the lane to discourage passing within the narrow lane. See the discussion of "taking the lane" *supra*.
66. *Id.* at 272.
67. Cal. Veh. Code § 21202(a)(3) (West Supp. 1995).
68. *e.g.*, when the traffic following the bicycle is preparing to turn right.
69. The five-in-a row rule requires a slow vehicle or bicycle to pull over at the nearest turnout if five or more vehicles are in line behind it (Cal. Veh. Code § 21656 (West 1971); *See supra* note 42). This requirement holds only "on a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions." *Id.* In other words, if overtaking traffic can pass a slow bicycle by changing lanes in the same direction or by crossing the centerline, there is no offense under the five-in-a-row rule even when five or more vehicles are waiting. It would then be unreasonable for an offense to exist under the slow bicycle rule when fewer than five vehicles are waiting.
70. Hill, *supra* note 63, at 99.
71. Cal. Veh. Code § 21207(a) (West Supp. 1995).
72. *Id.* § 21207(b) (West Supp. 1995); *See infra* notes 118-122 and accompanying text.
73. See definitions in the Appendix.
74. Whenever a bicycle lane has been established on a roadway pursuant to Section 21207, any person operating a bicycle upon the roadway at a speed less than the normal speed of traffic moving in the same direction shall ride within the bicycle lane, except that such person may move out of the lane under any of the following situations:
- (1) When overtaking and passing another bicycle, vehicle, or pedestrian within the lane or about to enter the lane if such overtaking and passing cannot be done safely within the lane.
  - (2) When preparing for a left turn at an intersection or into a private road or driveway.
  - (3) When reasonably necessary to leave the bicycle lane to avoid debris or other hazardous conditions.
75. The bike-lane rule also lacks the phrase "at such time" following "moving in the same direction." If a street includes a bike lane, it may therefore not be possible to argue that where bicycles predominate they determine the normal speed of traffic. See "The Rule Applies Only to Bicyclists Traveling Slowly" *supra*.
76. Bike lanes are normally dropped or dashed within 100 to 200 feet of an intersection, partially to encourage this movement, although the nature of the stripe has no legal significance. *See* Cal. Dep't of Transp., *supra* note 31, at Figure 1004.3.
77. Some group drafting configurations—in which one bicyclist rides closely behind the rider ahead to reduce wind resistance—also entail a double file.
78. Cal. Att'y. Gen., Indexed Letter, No. CV 74/224 (Jan. 21, 1975), at 7, in S. CON. RES. 47 Statewide Bicycle Committee, *supra* note 33.
79. For exactly the same reason, the Attorney General found in *Id.* that bicyclists could legally make a left turn from a left-turn lane or pocket, overtake and pass to the left of a slower vehicle, or move away from the right-hand curb or edge to avoid hazards in the roadway, even though Cal. Veh. Code § 21202 at that time contained no such explicit exceptions.
80. If such a law were enacted, it would disrupt traffic flow unnecessarily by preventing a motorist from passing a bicyclist in a lane wide enough to permit passing to be done safely.

81. See "Practicable is a Flexible Term Favorable to Bicyclists" and "What Constitutes a Violation?" *supra*.
82. "Bicyclists May Ride on the Shoulder" *infra* demonstrates that riding on the shoulder is lawful *per se*.
83. The slow bicycle rule does not apply to the bicyclist on the shoulder.
84. See "Bicyclists Are Not Required to Ride on the Shoulder" *supra*.
85. Cal. Veh. Code § 21650 (West 1971 & Supp. 1995) requires that all vehicles on the highway "be driven upon the right half of the roadway," and this requirement, like most traffic law, also applies to bicycles (*Id.* § 21200 (West 1971 & Supp. 1995)). The highway includes the shoulder, but the roadway does not. (See *infra* notes 105 and 111 and accompanying text.) An informal opinion from the California Legislative Counsel in 1983 concurred that bicyclists were prohibited from riding on shoulders. Letter from Assembly Member Burt Margolin to Arthur S. Rosman (Sept. 20, 1983).
86. Drafted by the author of this article.
87. Cal. Veh. Code § 21650.
88. *Id.* § 21650(g) (Stats. 1988, ch. 58, § 1) (West Supp. 1995). The bill also added *Id.* § 21650.1, requiring that "A bicycle operated on a roadway, or the shoulder of a highway, shall be operated in the same direction as vehicles are required to be driven upon the roadway."
89. Automobiles, especially expensive ones, provide significant social status as well as transportation. In an automobile-dominated society, bicycling indicates either poverty or eccentricity. Thus it becomes the voluntary choice primarily of those whose status is already both high and secure, such as well-educated professionals. Bicycling is also popular at universities and in university towns, where high student population densities, short trips, and restricted automobile parking make it attractive and where social status is either fluid or secure.
90. This distinction may have originated in an attempt to relieve child bicyclists of liability for their negligence. If so, the attempt was unsuccessful, since substantially the same traffic laws have to be imposed regardless of whether or not bicycles are legally considered vehicles.
91. This authority appears in Cal. Veh. Code § 21101(c) (West 1971 & Supp. 1995). Under current law, bicycles are not vehicles, and cannot be selectively prohibited as if they were. See *People v. Harrison*, No. E0238820-T, slip op. at 2 (Mun. Ct. Santa Clara County, Cal., Mar. 11, 1986); *supra* note 15 and accompanying text.
92. For the safety of bike paths, See *supra* note 30.
93. S.B. 515 (1995 Cal., amended in Senate April 6, 1995). The bill was introduced by Senator Lucy Killea, Independent of San Diego.
94. See *supra* note 53 and accompanying text.
95. Made applicable by Cal. Veh. Code § 21200 (West 1971 & Supp. 1995).
96. The slow bicycle rule is not a necessary element of traffic law; it did not even exist until 1963. Cal. Veh. Code § 21202 was added by Stats. 1963, ch. 479, p. 1337, § 2.
97. Words and phrases defined within the California Vehicle Code govern its construction, unless the provision or context requires otherwise. Cal. Veh. Code § 100 (West 1987).
98. *Id.* § 360 (West 1987).
99. *Id.*
100. See *Id.* § 590 (West 1987).
101. *Id.* § 530 (West 1987).
102. *People v. Smylie*, 217 Cal. App. 2d 118, 121 (1963); *Mecchi v. Lyon Van & Storage Co.*, 38 Cal. App. 2d 674, 680 (1940).
103. *Mecchi v. Lyon Van & Storage Co.*, 38 Cal. App. 2d 674, 680 (1940).
104. Cal. Veh. Code § 555 (West 1987).
105. *Id.* § 332 (West 1987); *cf.* Cal. Sts. & High. Code § 23.5 (West 1990).
106. See, e.g., Cal. Sts. & High. Code § 257 (West 1990) (for purpose of *Id.* div. 1, ch. 2, art. 2 only, "freeway" is a divided arterial highway for through traffic with full control of access and grade separations at intersections).
107. Cal. Veh. Code § 21755 (West 1971).
108. See *Altman v. Peirano*, 112 Cal. App. 2d 8, 11 (1952); *Stamper v. Schemmel*, 69 Cal. App. 2d 449, 451 (1945); *Williams v. Kawanami*, 53 Cal. App. 2d 14, 15 (1924); 35 Ops. Cal. Att'y.Gen. 39, 40 (1960).
109. *Altman v. Peirano*, 112 Cal. App. 2d 8, 13 (1952).
110. Cal. Veh. Code § 670 (West 1987).

111. *Id.* § 415 (West 1987).
112. *Id.* § 475 (West 1987).
113. *Id.* § 575 (West 1987).
114. *Id.* § 231 (West 1987).
115. Cal. Sts. & High. Code § 890.4 (West Supp. 1995).
116. *Id.* § 890.6 (West Supp. 1995).
117. Chapter 1000, *Bikeway Planning and Design*, in Cal. Dep't of Transp., *supra* note 31.
118. *Id.* at Index 1001.2.
119. Cal. Sts. & High. Code § 891 (West Supp. 1995).
120. *Id.* § 890.4(a) (West Supp. 1995).
121. *Id.*; Cal. Dep't of Transp., *supra* note 31, at Index 1002.4, 1003.1.
122. Cal. Sts. & High. Code § 890.4(b) (West Supp. 1995).
123. *Id.*; Cal. Dep't of Transp., *supra* note 31, at Index 1002.4, 1003.2.
124. Cal. Veh. Code § 21207 (West 1971 & Supp. 1995).
125. Cal. Sts. & High. Code § 890.4(c) (West Supp. 1995).
126. *Id.*; Cal. Dep't of Transp., *supra* note 31, at Index 1002.4, 1003.3.
127. In reviewing older literature, it may be useful to know that Stats. 1993, ch. 517 renumbered former Cal. Sts. & High. Code §§ 2373, 2374, and 2376 as §§ 890.4, 890.6, and 891 respectively.
128. Cal. Veh. Code § 385 (West 1987).
129. *Id.* § 23254 (West 1985).
130. *Id.* § 620 (West 1987).

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