

**MODERN ECONOMICS' INFLUENCE ON THE  
PRODUCT SAFETY DIALOGUE**

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## **Introduction**

During my Duke undergraduate career, I studied the various theories that encompass neo-classical economic thought, the logic that most heavily influences modern economics. I learned that the implementation of this economic theory is key to a well functioning and efficient economy that promotes growth and increases overall welfare. My work experience at an investment firm compounded this view and gave me insights on how the private sector views regulation and liability. However, I also had the opportunity to work at the Center for Auto Safety and the Center for Responsive Law, where I began to sense that there were substantial differences in perspective between the discipline and various other groups in society. This is especially the case when it comes to the policy prescriptions that various groups advance in the public policy dialogue on product safety. I wanted to study the paradox found in this dialogue, which is influenced not only by economic thought, but also by American institutional, mercantilist and structural thought. I discovered that attempts by the economics discipline to introduce the notions of utility and optimization in the product safety regulation and liability policy debate has had mixed success.

Product safety has become an increasingly important issue within public policy circles. Although the term sounds technical and rather simplistic, the implications from the manner in which it is treated by society significantly affect all parts of the economy. The issue is debated by various actors in society who each bring different angles, perspectives and biases to the table. Some policy participants are uncomfortable with notions of optimal product safety and worry about potentially compromising product safety for gains in economic efficiency. Opportunity cost tabulations in regard to product safety are done differently by the various members of the dialogue. Some members do not think that there is a significant tradeoff between strict product safety and efficiency. Others view it almost as a zero-sum situation. How to improve transparency over the safety of products is also contestable. Some participants argue that countervailing forces such as governmental regulation are needed to protect the consumer against those who would wish him harm. Others believe that these forces are unnecessary and counterproductive.

Discussion over how to increase product safety is conducted in academia, the private sector, consumer organizations, international institutions, the media, in professional associations, the general public and by various other groups. Actors from these various divisions in society come to Washington to argue their case to the government that their policy prescriptions are the most efficacious. Value sets are different, which make finding a resolution hard. The dialogue is full of mistrust and skepticism coming from all sides of the debate. Economists constrain the dialogue so that participants pay more attention to the costs of current and proposed actions that potentially could enhance product safety. Other participants believe that it is worthy to for society to endure these costs to promote the safety of the citizenry. Corporate benevolence/malevolence is viewed differently by the various groups. Product safety is further clouded by stylization, sensationalism, statistics, vested interest and monetary reward.

A recent product safety crisis that sheds light on the positions of the various policy groups towards product safety is the Congressional Ford/Firestone investigation conducted last fall. The case was called the biggest consumer safety story of the decade causing over 100 deaths and a recall of more than 6 million tires. Ford and Firestone were accused of covering up safety problems involving the Ford Explorer. Tires would disintegrate while the car was traveling at high speeds, often leading to a roll-over of the vehicle. Certain actors called for tougher auto-safety regulation, while others tried and succeeded in preventing more governmental involvement.

This dialogue brings in notions of equity, justice and the merits of economic freedom. The policy prescriptions advocated by the economics discipline preclude a lot of policy solutions that other stakeholders would like to see either implemented or preserved. The product safety debate relates to the question over what sort of rights consumers and other stakeholders have. Since charters are given out by a democratic entity, questions often abound over how much power should the polity have to constrain economic activity in order to support a goal such as product safety. For this reason, stakeholders believe that they have a right to participate in this discussion. Lack of a consensus has resulted in a diverse regulatory and liability structure. Some members of

the conversation say that it does not promote enough product safety, while others accuse it of being inefficient and costly to economic activity.

### **Modern Economics**

Modern economics has done significant work in the field of product safety. The discipline has a certain set of preconceptions over how best to regulate the safety of products. The discipline seems to take the position of “let the buyer beware.” The consumer is a rational actor who has access to information to determine the safety of a product. The market will then regulate an optimal level of product safety since consumers will not buy products that they deem unsafe. Members of the economics profession are interested in the desired end of product safety but are concerned also with the allocation of resources within society. They seek to reform the current product liability and regulatory structure found in the US. This stems from the discipline’s concern over negative consequences to product innovation and economic growth resulting from placing an inefficient regulatory and liability framework onto corporations with the desire of making their products safer. Modern economics does not wholeheartedly oppose product safety regulation since a policy consensus has compromised the free market position by concluding that government should be given limited authority to interfere in the market in order to uphold product safety. They rather focus attention on developing optimal regimes designed to provide incentives for firms to produce safe products. There is no single overriding agreement within the field over the methods to obtain product safety. However, there are clear trends. Regulation should be put in place only if it is efficient and if cost-benefit analyses have been conducted. Secondly, strict liability in the form of tort law is frowned upon for being inefficient and unpredictable. Thirdly, criminal sanctions should not be levied against management for product safety lapses. Lastly, modern economics is skeptical of the motivations of regulatory agencies and would like society to help check their power to unjustly constrain the private sector. These recommendations form the academic base of the campaign to reform the product liability and the product safety regulatory structure present in the US.

An example of modern economics' mistrust of social and economics regulation is expressed by the British economist Arthur Shenfield:

I have with regret to acknowledge, that once-great nation [England] has been suffocating itself for a whole generation and more. And it has been suffocating itself precisely through its deplorable decision, or rather series of decisions...to embrace the processes of governmental regulation and intervention in all its economic and social affairs. It has entrusted its government with the task of solving its economic and social problems, in which its governments, a whole succession of them of more than one color, have failed miserably. (Siegan, 66)

Here one can see the remnants of the laissez-faire classical tradition and how it has influenced the now dominant neo-classical tradition. Modern economics has come to the realization that product safety is important for a well-functioning economy. However, it would like to fit product safety into its efficiency maximizing paradigm so that growth, productivity and innovation are not harmed.

W. Kip Viscusi and Michael J. Moore express the neo-classical position that product liability should ideally "promote efficient levels of product safety."(Moore, 161) At such levels, innovation and product development should not be hindered. Economists such as Gary S. Becker believe that punishment should act as a "Pigouvian tax," thus forcing economic actors to internalize the costs of engaging in action leading to negative externalities such as producing dangerous products. He also affirms that optimal incentives should be constructed in order to minimize "social loss." (Becker, 207) He provides a foundation for modern economics' preference for the construction of an efficient product safety regulation system instead of relying on other product safety enforcement methods like strict liability. Modern economics believes that the former is more efficient because firms can anticipate regulation, but have harder times gauging the unpredictable costs posed by the legal system.

Even though a consensus has been reached over the merits of regulation as opposed to strict liability in order to promote product safety, the profession still debates the efficacy of certain specific regulations. Various studies have been conducted on

product safety regulation with conflicting results. Some scholars such as Sam Peelman argue that safety regulation has not affected the death toll on the highway. He postulates that this regulation has increased the level of danger faced by pedestrians since drivers feel too secure about their safety and they ignore the safety of others. In another study, Clifford Winston and Fred Mannering quantified the efficacy of legislation regulating the introduction of passive restraints, air bags and crash resistant bumpers by performing a cost-benefit analysis. The economists discovered that there was indeed net-benefit in the various automobile regulations studied in the analysis. Their calculations subtracted installation costs from overall benefit. (Mannering, 318) Robert W. Crandall, Theodore E. Keeler and Lester B. Lave argue that automobile regulations increase operating and ownership costs by 18%. However, most of this is attributed to the costs of emissions standards, while safety regulation does not figure greatly into the auto's costs. Automobile safety regulation is not vigorously opposed in economics since its costs are rather small. However, low levels of safety regulation seems to be preferred to higher levels.

Carl Shapiro states that "efficient policy concerning accidents involves two primary aspects: deterrence and compensation." (Shapiro, 4) Deterrence is good only if it does not take the form of over-deterrence. Such deterrence can take the form of regulation. According to Shapiro, there is a mutual desire for compensation in the form of insurance because of human's risk adverse nature. In our present system, however, compensation is most frequently conducted through the legal system by using tort law. The use of strict liability institutions like tort law with the aim of improving product safety is strongly disapproved by the economics profession. Economists have conducted considerable research gauging the efficacy of ex ante policies such as Pigouvian taxes advocated by Becker versus ex post policies such as tort liability. The latter legal tool has increased in popularity since its scope was widely expanded in the 1970s. Many economists believe that absolute liability imposed through tort law does not lead to a safer product. Litan writes, "Most of the authors who addressed the safety side of the liability debate found little direct or statistical evidence that specific liability verdicts have led to substantially safer products." (Litan, 60) He does concede that tort law

induces manufacturers to expand safety warnings, but there is no firm evidence that this increases product safety.

Economists believe that tort law is not an efficient means to compensate victims since there are more efficacious alternatives such as direct accident insurance. (Shapiro, 4) The transaction costs of tort liability are substantial, and the process reduces efficiency since recoveries are made long after the initial market entry of the product. Moreover, the utility of tort law is highly subjective and difficult to quantify. It is also difficult to obtain data on the effectiveness of tort law liability in its application to product safety. (Litan, 60)

Economists are astonished by the dramatic increases in costs of liability insurance and their effects on the overall economy due to use of legal tools such as tort law. Insurance has increased sixfold from 1975 to 1988 far surpassing the rate of growth of the CPI. Moore and Viscusi attribute this increase to changes in the liability structure present in the U.S. The judicial system has forced manufacturers to take responsibility for providing product risk insurance for their products. Firms have also been made responsible for design defects in addition to manufacturing defects. Modern economics argues that increases in firm liability is highly costly to both lowly innovative and highly innovative firms. The least innovative firms run into liability problems since they do not have the innovative capacity to stay on top of contemporary product safety norms. On the other hand, highly innovative firms run the risk of unknowingly introducing new products that may in the future run high liability costs. Product innovation decreases when an economy incurs high product liability costs. Moore and Viscusi write:

High levels of liability consequently may eliminate all innovation and lead firms to adopt designs without liability costs. Product engineers, for example, frequently note a bias toward accepted but somewhat risky designs rather than designs whose safety level is uncertain relative to the status quo. (Moore, 166)

Economists often cite the biotech, pharmaceutical and small aircraft industries as illustrations of this phenomenon. A specific example is Monsanto's reluctance to market its patented phosphate fiber asbestos substitute due to liability fears. Furthermore, some

vaccines have not been brought to the market due to the statistical possibility of liability risks. Numerous companies specializing in the manufacturing of small planes were forced to close because of product liability costs. Preist cites a survey of manufactures published in 1986 in an attempt to add weight to this point. The survey reported that 47% of those firms had withdrawn products from the market, 39% decided not to introduce products to the market and 25% discontinued product research due to expanded liability. Some economists fear that internalizing liability might increase the price of the product to such a degree that the product is outpriced in the market. In addition, the threat of product liability can deter innovation because manufacturers are afraid to introduce new safety improvements because such actions might be interpreted as implicitly agreeing that previous models were inferior and open the firm to fresh liability. Tort liability also reduces transparency. According to Preist, many industries refrain from releasing information about accidents due to apprehension over product liability lawsuits. It is argued that internalizing product risk in a strict manner may induce consumers to buy more dangerous products because they will feel cushioned from their potential risk.

Economists also take issue with institutions created to uphold product safety. Some economists maintain that enforcement agencies often act as costly rent seekers through their aggressive handling of product liability issues (Friedman). Friedman argues that the orthodox view over the efficacy of regulation treats criminals as rational self interested individuals, while viewing the “enforcement apparatus-police, courts, prosecutors, and legislature-as philosopher-King, with imperfect knowledge but only the best of motives.” (Friedman, 262) This orthodox view is rejected by many contemporary economists who believe that all actors, including regulatory bodies, should be treated symmetrically. Society should take into account the costs and benefits of a regulation and recognize that sometimes society would be better off with less than correct punishments since the costs of regulation might outweigh its benefits. Friedman believes that economists should account for the motives of regulators when constructing cost-benefit analysis. This further complicates attempts to find the rate of optimal punishment, which according to the author, is partly the reason that this position is often ignored in practice.

Modern economics distinguish between “real crimes” and “quasi-criminal offenses.” Those who support this view believe that there is a morality distinction between the two. (Lofquist et al, 198) Regulatory breaches should not be criminally prosecuted. Instead, monetary fines should serve as efficient punishments that would promote correct behavior.

The inability to absolutely quantify the effects of ex ante and ex post policies has plunged the merits of product safety liability and regulation into a permanent debate in the national and international policy forum. However, modern economics has come to a consensus over four important points. Regulatory actions should be used to uphold product safety and it should be done in an efficient manner so it does not hurt innovation and economic growth. Product safety is good for the long run, but its achievement should not drain resources and opportunity costs should be tabulated. Regulatory bodies are criticized for being bureaucratic, lethargic and partial. Finally, criminal sanctions and tort law should not be used to promote product safety. Many actors within the policy forum on product safety look to the economics discipline for theory to back up their various positions. The discipline has taken the matter seriously and tries to come up with the most equitable solution that maximizes both economics efficiency and product safety.

### **The Legal Discipline and Profession**

The neo-classical efficient regulatory regime structure advanced by modern economics is countered by forces within the legal discipline and practice. The legal discipline acts as a counterweight to the economics discipline. It also serves as an academic backdrop for different policy players within the dialogue. The discipline seems not to emphasize as much the opportunity costs involved with strict product safety protection as does the economics discipline. The relatively unified opinion found in the economics discipline, though, is not found within the legal discipline. This enlarges the academic parameters of the debate and the number of policy tools available to help maximize product safety. Neo-classical thought finds itself in the minority within the legal realm, but still has a voice that is becoming ever more prominent. To better understand the ideological debate found in law over product safety, it is interesting to

look more closely at the rifts found within the legal discipline. There are three principle schools within law that divide the academic debate over product safety.

The positions expressed by the first school are closest to the limited, yet efficient regulatory framework advanced by the economics profession. It is based on agency theory and maintains that actors within a corporation are rational and attempt to maximize personal or organizational utility. When market incentives are greater than incentives imposed by the state not to commit a certain action, the rational actor will engage in the socially undesired behavior. This problem is solved through the creation of an efficient incentive structure discouraging behavior that leads to negative externalities. This logic is defended by the sub-discipline known as law & economics, which has its origins at the University of Chicago. The university publishes a well-read journal under the same name presenting studies on various inefficiencies within the regulatory or legal structure in the US. Just like the economics discipline, this school also encourages cost-benefit analyses for proposed and existing regulation.

This group maintains that the power of the free market eliminates firms that are not concerned with producing safe products because customers value safety highly and will not purchase products from such firms. It also believes that corporate crime and wrongdoing are merely technical violations of the law and cannot be compared with violent street crime. Therefore criminal sanctioning for businesses that are guilty of not taking consumer safety seriously should not be prosecuted. Businesses are given more freedom to operate and there is a general understanding of the opportunity costs involved in having a modern-industrialized economy. The benefits of laissez-faire economic activity outweigh the costs. The economics discipline supports this mindset, which explains why there is so much cross-fertilization between supporters of the non-interventionist agency logic and the economics discipline. Economics used to enter the legal field mainly in the areas of antitrust law, regulated industries, tax and the determination of monetary damages. However, recently economics has been used for contracts, torts, criminal law and procedure, and constitutional law applications. (Lofquist et al, 122) This part of the legal discipline is lending support for an increase in this trend.

The second school of thought differs from the first by its more liberal notion of the appropriate tools that can be used to force corporations to emphasize product safety. The logic found in this division of law is still founded on the notion that rationality and efficiently constructed incentive structures will positively influence corporate behavior. Supporters advocate the creation of “corporate crime control strategies [that] focus on reliance on extant market forces and the simulation of these forces by the regulatory or criminal law to deter illegal conduct.” (Lofquist et al, 17) Criminal sanctioning is sometimes needed to help reduce negative externalities arising from corporate disregard of product safety. Leo Barrile, a specialist in crime and punishment writes:

criminal prosecutions are particularly appropriate when company officials demonstrate a disregard for health and safety exposing workers, consumers, and the general public to known hazards, causing injury, disease, or death.” (Lofquist et al, 175)

The economics discipline has some influence in this area of law by its agency theory logic. The main point of contention is over the tools available to correct firm behavior. Criminal sanctioning is allowed and the court system can circumvent the free market. The economics discipline is not pleased with these tools.

The third group within the legal domain is influenced by structural logic found both within law and sociology. William S. Lofquist, a sociologist, writes that “organizations are most effectively controlled when subject to distinct, organization-specific criminal laws, characterized at least in part by sanctions directed toward the alteration of internal organizational structures and processes in cases of wrongdoing.” (Lofquist et al, 14) Critics of agency logic believe that there are many instances where market based sanctioning do not produce desirable outcomes. Structuralists do not view the role of the state as an inefficient bureaucratic entity that hampers societal prosperity. Proponents maintain that citizens can work with government to constrain firm behavior to protect against dangerous products and other socially desirable ends.

It is argued that structural sanctions are needed to channel socially desirable corporate behavior like product safety. Richard Gruner, a law professor argues:

In situations where these pressures are not adequate to produce organizational structures that promote law compliance and public protection, structural sanctions following corporate criminal liability offer means to force recalcitrant firms to adopt the operating structures and methods that are needed for law compliance. (Lofquist et al,145)

Tort law is looked upon favorably because it gives corporations incentives to produce safer products. Firms will take product safety seriously if they know that by not doing so, they will face serious legal consequences down the road. Those who advocate the structural approach also maintain that consumers need an advocate and propose that government bodies can partially act as one. They are suspicious of leaving product safety in the hands of the free-market. In response to self-regulation, Alan B. Morrison, Director of the Public Citizen Litigation Group remarked, “One of the laws of business is that every businessman is out to make a buck. I think that is a good law, but one we ought to take into account when we are deciding whether the businessman should do the testing of drugs.” (Siegan, 73) Adherents believe that businesses have a track record of not advancing product safety and that their behavior should be constrained through institutional mechanisms so that greater product safety can be achieved.

The mainstream legal discipline is made up of those that fall into the second and third groups. The mainstream believes that certain transactions should not be entirely governed by the free market. The discipline is more skeptical of the idea that the free-market produces the most efficient outcomes. It maintains that there exist many occasions where the free market does not lead to a desirable outcome. The legal discipline is more pragmatic and less theoretical than the economics discipline. Neither a blind faith in the market is presented nor a willingness to condition society to a free-market framework. The institutions and the incentive regimes put forth by the legal discipline are more extensive than those that the economics discipline advances. Criminal sanctions, tort law, regulation can all be used to create an efficient regulatory and product liability structure to make sure that firms are serious about taking constructive action in rectifying known defects in products and conveying this message to its customers. The notion of an insurance crisis due to the overuse of tort law that members of the economics discipline as well as others in the dialogue over product safety

often allude to is looked upon skeptically by the legal discipline. Ralph Nader, who has taught law, cites an editorial in *Business Week* in January of 1987 as evidence that tort law may not be the culprit for substantial increases in insurance premiums:

Even while the industry[insurance] was blaming its troubles on the tort system, many experts pointed out that its problems were largely self-made. In previous years the industry had slashed prices competitively to the point that it incurred enormous losses. That, rather than excessive jury awards, explained most of the industry's financial difficulties. (Nader, 285)

Product liability is a relatively new legal phenomenon. Product liability law emerged in 1916 after the decision in *MacPherson v. Buick Motor Co.*, [217 N.Y. 382, 111 N.E. 1050]. The Court of Appeals held that, "the manufacturer of any product capable of serious harm if incautiously made owed a duty of care in the design, inspection, and fabrication of the product, a duty owed not only to the immediate purchaser but to all persons who might foreseeably come into contact with the product." (Black's Law Dictionary, 1226)

The notion of strict product liability has since been advanced and its parameters are defined by Black's Law Dictionary:

The buyer proves that the goods were unreasonably dangerous and that (1) the seller was in the business of selling goods; (2) the goods were defective when they were in the seller's hands, (3) the defect caused the plaintiff's injury, and (4) the product was expected to and did reach the consumer without substantial change in condition. (BLD, 1226)

Lawyers try to induce firms to treat product safety problems seriously by bringing what are known as product safety actions to the US court system. The historical advancement of product safety within the law has increased the power of law professionals. They are able to play an important role in forcing firms to pay due attention to the safety of their product line. Not surprisingly, legal practitioners are strong supporters of tort law and its

ability to uphold product safety. This is where the sharpest division between the economics and legal disciplines can be seen.

The Association of Trial Lawyers lauds the capacity of the civil justice system in protecting consumers and is especially proud of the performance of the American jurisprudence system's ability to detect early on the serious problems that the Ford Explorer had using Firestone tires. The organization points out that lawsuits were filed as early as 1992 serving notice to the Ford and Firestone corporation that there were serious safety problems with the use of Firestone tires mounted on Ford Explorers. The civil justice system also kept track of the problem, something that was not done by the two corporations independently. The association of trial lawyers writes:

An unfettered civil justice system roots out dangers, holds people and corporations accountable for creating those dangers, compensates those victimized, and prevents others from being hurt by those dangers. Knowing the power of the civil justice system to protect consumers, why would anyone want to 'reform' it? Could it be that Ford and Firestone, and other corporate behemoths just want to hide the truth and protect their profits from the people they hurt?  
(ATLA, 3/5/01)

The economics discipline has difficulty in convincing trial lawyers that tort law is not an efficient way to uphold product safety. The Firestone case will not help this cause. However, the debate over the efficacy of tort law is still being played out and the ATLA has had to spend a lot of money aggressively defending the merits of the institution. The legal discipline agrees that efficient regulation ought to be established, but also affirms that other tools must be available to society to maintain product safety when regulation does not work. The profession tries to counter the familiar slogan that the legal system is broken. Economists, think tanks, special interests have at different times tried to shed light on the inefficiencies of the legal system. Frederick M. Baron, president of the ATLA, wrote a letter to *Business Week* saying, "The tobacco, insurance, and drug companies—in their quest for special protection from the consumers and workers they hurt—want everyone to think the legal system is broken. It's not." (Baron,

1) The legal discipline is not as theoretical as the economics discipline and is skeptical of the notion of finding a regulatory point where firms will not want to produce unsafe products. They would rather do as much as possible to enhance product safety, paying marginally less attention to the costs involved than the economics discipline.

### **The Private Sector**

The private sector joins the dialogue over product safety from a position of political and financial strength. However, it must navigate through the various constraints placed upon it by a democratic society that has given it the freedom to operate. The private sector presents both a public and a private stand in regards to product safety. The stand advanced publicly by the private sector seems to be constrained by consumer pressures and the desire to present a good corporate image to all of its stakeholders. The view expressed privately by industry is influenced by its mercantilist profit seeking behavior. However, the private sector has been able to turn to modern economics for academic support. Much of industry's upper management has been trained at some point in their life by the economics discipline. Once these professionals reach the real world, they have to deal with the pressures of the bottom line and international competition. Overall, industry is uncomfortable with the notion of product safety liability. They do not want to carry unneeded costs that would potentially hurt their balance sheets and sour investor relations. The private sector's unease with product safety regulation and liability comes from its apparent desire to deflect the burden of risk of unsafe products on to other groups in society. This has led some observers to accuse auto manufacturers of disregarding consumer protection and safety. (Pontell, 59) A frequently cited example of when this trend first started in the auto industry is when General Motors refused to install safety glass in the 1920s claiming that it was too costly. Industry pressure has been regularly directed at different groups in the discussion in an attempt to avoid further "costly" consumer and safety protection systems. This occurred during the debate over whether government should force manufacturers to place seat belts, air bags and other safety devices into automobiles. Oftentimes additions that increase safety are quite cheap, but when per car costs are aggregated they become heavy burdens on firms. Firm behavior seems to suggest that

they feel that they have the right to determine the level of safety a product that they are introducing to the market should have. Product safety features should be introduced due to market and demand driven forces, not due to governmental intrusion.

The private sector doesn't want government to impede its activities and to entangle private firms with what it deems unnecessary regulation. Manufacturers have looked to classical and neo-classical economic doctrine to find academic evidence to back up this point. Industry often puts economics professors on retainer agreements so that they can help support firm policies with academic evidence. The private sector prefers voluntary and non-binding agreements on acceptable behavioral norms made with government, rather than official and legally binding regulation and liability. It argues that since most corporations do not misbehave, there should be very limited amounts of regulation. Corporations typically place the interest of the firm and the bottom line ahead of the interests of other stakeholders in society.

The private sector would like to see an elimination of strict tort liability for product safety. Lawsuits are very expensive for corporations. Shareholders of corporations also become nervous upon speculation of a pending law suit. This complicates a firm's credit rating and its profitability. Even worse, as *The Economist* points out from a recent study by Jonathan Karpoff of the University of Washington and John Lott Jr. of Yale Law School,

Announcements of lawsuits seeking punitive damages caused losses in market capitalization that, on average, exceeded the eventual settlement. The authors attributed this to lawyers' fees and lasting damage to corporate reputations. (*The Economist*, 3/22/01)

Corporations actively try to influence the dialogue over product safety by trying to reduce tort liability and are fortunate to have powerful allies in the economics discipline. Corporations focus on the bottom line. This is supported by the economics profession. As Milton Friedman was famous for saying, the social objective of corporations should be to maximize profit.

It is important to note that private sector thinking is not uniform. There do exist many executives that place society's well-being paramount over financial objectives. A good example of reflective self-criticism coming from the private sector is from Charles M. Denny, a former CEO who wrote a piece in the Star Tribune in Minneapolis, MN about corporate dishonesty:

As one who spent 32 years as a businessperson, and a former CEO and a board director of a number of Minnesota companies, I am embarrassed as I read the business section of my daily paper. A relative handful of business leaders are tarnishing the reputations of the majority of executives who are honest, thoughtful and caring individuals. A recent spate of corporate missteps and misdeeds has cast a shadow upon the business community, providing its detractors with ample evidence of corporate incompetence, insensitivity or skullduggery. A few glaring examples include: The failure of Ford Motor Co. and its supplier, Firestone, to identify and correct a long-simmering product defect that has been responsible for scores of fatalities. (Denny, 1)

No matter the intensity of management's pecuniary interests, the private sector still seeks to promote a public image showing it cares deeply about consumer protection and product safety. A company's product safety reputation has a bearing on its stock price, since investors will be reluctant to allocate money to a firm that may face future liability problems. This encourages firms to preserve the impression that they promote product safety and management integrity. They spend heavily on making sure their reputations are not tarnished. During the Congressional investigation of Ford/Firestone, Jac Nasser, CEO of Ford Motors, appeared in TV ads trying to bolster consumer confidence in the Ford Explorer. Nasser also wrote in a letter on Corporate Citizenship saying companies ought be:

Open, transparent in their decision-making, engaged with stakeholders and accountable for the social, environmental and economic impacts of their choices. They generate sustained profits from market offerings that meet important human

needs with a smaller environmental footprint and greater value to society.  
(Nasser, 1)

But his actions in the Ford/Firestone tire failure case suggest otherwise.

A more transparent view of the private sector stance towards product safety can be seen from statements made by special interest groups such as the US Chamber of Commerce and the National Association of Manufacturing. The economics discipline has had great success in dispersing their theories to these private sector special interest groups. The Chamber of Commerce has represented private sector interests since 1912. Members include 3,000,000 businesses, 3,000 state and local chambers, 830 business associations and 87 American chambers abroad. The organization has much influence in the US and abroad, which extends to the European Union and many small third world countries. Its behind the scenes role should not be underestimated in the Ford/Firestone case. The institution congratulates itself on its web-site for playing a “key role in reshaping deeply flawed auto safety legislation that would have imposed unprecedented penalties on executives without adequate legal or commercial safeguards.”( Legislative Victories, 4) It also helped coordinate the congressional move to pass the House, rather than the more stringent Senate version of the auto safety bill, which was supposed to overhaul regulatory problems and thus greatly reduce the chances of a similar tragedy occurring in the future.

Like the economics profession, the Chamber is strongly opposed to the use of criminal penalties to increase product safety protection. The organization takes the familiar private sector line that such measures would not lead to safer products and that there already exist numerous market mechanisms to punish companies for producing defective products. It also argues that such penalties would sour the cooperative relationship between the private sector and government. The executive vice president of the Chamber argues that “Criminally penalizing ‘knowing and willful’ violations creates a strong incentive for companies – under due process and the advice of legal counsel – to practice willful ignorance by omitting tests and studies.” (Chamber 9/25/00, 1)

The National Association of Manufactures is also highly influential in representing the private sector’s concern over government’s treatment of product safety.

The NAM is supportive of transportation policies that promote public welfare including those policies that help reduce losses of life, property and productivity. However, this view is qualified by the insistence that any regulation or expenditure must be “reasonable.” The organization believes that the entire system of regulation, including product safety, should be overhauled. The NAM advocates that, “Rules should be rooted in sound-science and cost-benefit analysis and more generally, the burden of regulation needs to be tightened.” (NAM, Pro Growth Policy, 3) The organization also believes, “At a minimum, agencies should promulgate rules only after real “notice and comment” from the public, rather than through the back door.” The NAM is a strong advocate of “product liability reform” and other reforms relating to regulation. Once again, much of what the NAM advocates comes directly out of neo-classical economics.

The private sector was able to strongly influence the final legislation passed by Congress. Sen. John McCain, an advocate of strong regulatory measures to enhance auto safety, remarked “the fix is in by the special interests.” (Public Citizen, 1) A report put out by Public Citizen using data from the Federal Election Commission and the Center for Responsive Politics found that the auto industry contributed \$37.8 million to lawmakers between 1995-2000. 77% of this amount went to Republicans. Political parties have received \$4 million in soft money from the top auto industry donors. It was also reported that auto industry companies and groups have spent over \$112.6 million to lobby Congress and the Clinton administration from 1997 to June 2000. (AIUT, 1)

Political analysts often complain that there is too much influence by special interest over governmental policies. This power comes from industry’s well-organized infrastructure and deep coffers used to direct the formation of legislation to its liking. The economics profession benefits from having a steady relationship with such well-funded groups that actively support a large portion of its economics agenda. This helps the discipline expand the reach of its theories and views into other policy sectors in society. Many people within industry have training in economics and share similar mindsets with the economics profession. The ability of the discipline to condition corporate America to its theories should not be underestimated and helps explain why the economics discipline and the private sector often see eye-to-eye on many product safety issues. The private sector is one of the most important players in the dialogue over

product safety even though it doesn't not have the voting power to directly affect government's composition.

### **Consumer Groups**

The private sector's policy nemesis are the various consumer groups operating in the US. Consumer organizations have serious misgiving about the ability of modern economics' optimal regulatory regime to promote product safety. They argue that more policy prescriptions are needed to ensure that firms take into account product safety. These organizations treat product and consumer safety almost as human rights. In a democracy, citizens have the right to demand the safety of products they use. They advocate the creation of institutions that will force companies to be forthcoming with knowledge of safety flaws in their products. They do not take a buyer beware attitude and don't think that the free market will weed out companies that do not promote this end. The consumer protection movement got underway during the Corvair Exposé in the 1960s led by Ralph Nader, a Harvard trained lawyer. He writes in a groundbreaking article for *The Nation* entitled, "The Safe Car You Can't Buy" in 1959, "IT IS CLEAR THAT Detroit today is designing automobiles for style, cost, performance, and calculated obsolescence, but not-despite the 5,000,000 reported accidents, nearly 40,000 fatalities, 110,000 permanent disabilities and 1,500,000 injuries yearly-for safety." (Nader, 267) The free market was not able to prevent these casualties then and is not believed to be able to do so now. Instead, government and an informed citizenry needs to step in and demand and constrain firms so that product safety is increased.

Consumer groups such as Public Citizen, Consumers Union and the Center for Auto Safety (CAS) tend to look to the legal discipline for academic support in order to back up their arguments. Public Citizen and the CAS were founded by Ralph Nader and work together with other Nader affiliated groups. Both current heads of these organizations are trained lawyers.

These organizations engage in various activities in order to spread their message that product safety should not be sacrificed to the bottom line and that the free market is not enough to protect consumers from dangers embedded in some of the products they use. These groups not only campaign against rollbacks in the present regulatory structure,

but also actively support additional increases in regulation and in other institutions that they see advancing product safety. Consumer organizations are also on the alert for unsafe products and help initiate and fuel campaigns to recall such products. These organizations try to uncover un-transparent corporate behavior in regard to product safety. To realize these objectives, the organizations have sophisticated litigation teams that navigate the legal system to advance various consumer objectives. The organizations also provide needed information to the public and take stands on various product safety hazards. They gauge the efficacy of current government investigations into unsafe products. Public Citizen has a whole page on their web-site devoted to the Ford/Firestone case, which is both accessible and understandable to the average citizen.

They do not advocate the limited policy prescriptions suggested by the economics discipline, but rather advocate different regimes and agency structures in order to advance product safety. Public citizen's mission statement reads:

Public Citizen is the consumer's eyes and ears in Washington. With the support of more than 150,000 people like you, we fight for safer drugs and medical devices, cleaner and safer energy sources, a cleaner environment, fair trade, and a more open and democratic government...We stand up for you against thousands of special interest lobbyists in Washington—well-heeled agents for drug companies, the automakers, big energy interests-and the like. (Public Citizen Mission)

The organization sees government's role as paternal in nature. It should interfere in the private domain to promote the happiness of the citizenry. Product safety cannot be looked upon in pure economic terms. Government should intervene if it can be done in a relatively simple manner. Claybrook was asked to comment on litigiousness and how it affects society. She responds:

Companies have been very, very successful on two themes. One is that the individual ought to be responsible. The second theme is that big corporations act responsibly, they're upstanding citizens, and if people get into trouble with their products, it's because they were careless. And if you try to put controls on that

product, then they're going to go out of business and then we're not going to have a good economy and jobs. And all those propositions are false, in my view. Most regulation on the books comes after years of hearings, deaths, injuries, harm, begging and pleading to get people in power to do the right things. (Conniff, 6)

Many of the voices coming from the economics discipline in regard to product safety are categorically rejected by the consumer-organization part of the dialogue. Consumer organizations also strongly support the tort system. Claybrook writes:

In the case of liability suits, a company that manufactures a faulty product finally gets sued, and they get into a neutral forum, the courts, where they have to behave and answer the judge, and the decisions are made by juries of citizens who luckily, unlike legislators, don't get lobbied and don't get campaign money. It's really the finest role of the citizen to be a juror. And juries make decisions that just infuriate the companies. The reason companies want to have the laws limit their liability is because they don't want to live up to the societal standard that is represented by a jury. (Conniff, 6)

Consumer groups, for the most part, believe that the attacks on the power of judges and juries coming from voices in the economics discipline, the private sector, and some think tanks have no foundation. Ralph Nader writes, "There is no evidence that judges and juries are unjustly punishing wrongdoers and unfairly rewarding people He injured by defective products or practices." (Nader, 280) Nader does not believe that punitive damages are out of control as some in the dialogue over product safety believe. writes:

Between 1965 and 1990, only 355 punitive damage awards were made in state and federal product liability cases. Of this total, ninety-one punitive damage awards involved asbestos cases. This means that on average, there were only about eleven punitive damage awards a year in this time period. (Nader, 281)

Public Citizen works not only on improving the national regulatory and institutional structure, but also seeks to influence this structure on a global level. The organization acts as a safeguard against multilateral harmonization campaigns that might replace nationally determined product standards. Consumer organizations want international standards to be raised, not lowered. Public Citizen is a major critic of the WTO for not advancing consumer rights.

The economics discipline has become increasingly theoretical and often does not issue specific policy prescriptions for particular cases. However, consumer organizations have developed internal capabilities to draft potential legislation and policy prescriptions. A statement put out by Joan Claybrook, the director of Public Citizen, last fall gave her organization's stance on what should be the minimum acceptable legislation in order to advance automobile safety:

(1) a significant increase in the civil penalties that automakers would face if they refuse to recall a defective or non-complying part or vehicle or if they withhold critical information; (2) criminal penalties including prison terms, for cases in which deaths and/or injuries result from the failure of manufacturers to recall a defective or non-complying vehicle or product; (3) a requirement that NHTSA update its 32-year old tire safety standard; (4) a requirement that automakers notify NHTSA when they recall defective vehicles in other countries or have warranty claims about defective components, injury lawsuits, consumer complaints or other early warnings information about a potential defect (Claybrook, 9/20/00)

Parts of this legislation would be deemed unacceptable by many economists. However, members of consumer groups believe that these measures are needed to protect the wider public from dangerous products. The end of product safety is more important than potential economic efficiency loss.

The Center for Auto Safety is another organization that upholds automobile consumer safety rights. The CAS was founded to "provide consumers a voice for auto

safety and quality in Washington and to help lemon owners fight back across the country.” ([www.autosafety.org/about.htm](http://www.autosafety.org/about.htm))

The CAS claims that safety and highway standards have decreased the death rate on America’s road from 5.2 per 100 million vehicles mile traveled in 1969 to 1.7 in 1997. Such decreases are significant for the organization and it would not listen fondly to economic arguments maintaining that the costs to reduce these accident figures potentially might not be worth the benefit.

The center also has a litigation group that actively promotes the use of tort law. It filed suit on August 21, 2000 against Ford and Bridgestone/Firestone to replace all ATX and ATX Wilderness tires. The CAS filed a suit based on legal provisions giving them the right to sue on behalf “of the public still riding on or sharing the road with defective Firestone tires.” (CAS, 8/21/00) The law gives these organizations explicit power to use vehicles like tort law to increase product safety. Since much of consumer groups’ power come from tort law, they often advocate the institution’s efficacy. Clarence Ditlow, the director of the CAS, believes that the auto industry is primarily responsible for auto safety. He writes that the auto industry has:

...long had the know-how to build cars that protect occupants in 50 mph front, rear, and side crashes. The auto industry also has the know-how to improve vehicle controls, handling and stability, and braking to avoid crashes. The federal government’s role is to force the auto industry to build auto safety into new cars and trucks and to ensure safe road designs and regulate driver behavior through speed limits, occupant restraint laws, and impaired driver control measures, such as sobriety checkpoints and public safety campaigns. (McMurry, 2)

The debate over efficiency vs. equity is clearly seen in consumer groups’ position on the issue of product safety. They hold safety in the highest esteem and don’t believe that it should be held subordinate to economic interests. These organizations have had wide resonance with the general public. They are frequently called to testify before Congress and are regularly cited in the press. The general public is fond of these institutions because of their “clean” reputation. The economics discipline will have an

extremely hard time convincing this part of the conversation that they should give up different policy tools used to advance product safety and rely merely on efficient regulatory structures.

These organizations represent an ideological special interest that gains no monetary return from its activities, but rather works for intangible satisfaction knowing they are helping the citizenry. They view the debate as between economic freedom and justice. How can you have one without the other? They are very influential in the dialogue over product safety and are respected by the industry for the power they can amass. Ed Henry, a reporter for *Kiplinger Personal Finance Magazine* writes, “Near the top of the list of people an automaker wouldn’t want to cross must be Joan Claybrook, president of Ralph Nader’s Public Citizen and former head of the National Highway Transportation Safety Administration.” (Henry, 1) Consumer groups insist that corporations must take responsibility for their products and see to it that they rectify any known and flagrant problems. They do not want the private sector to view them as threats to the private enterprise economy. Ralph Nader stated in a keynote address to the consumer assembly in 1967:

It [the consumer movement] is just the opposite. It is an attempt to preserve the enterprise economy by making the market work better. It is an attempt to preserve the democratic control of technology by giving government a role in the decision-making process as to how much or how little safety products must contain...The upshot of consumer protection is to hold industry to higher standards of excellence. I can’t see why they should object to that kind of incentive. As it gains momentum, the consumer movement will begin to narrow the gap between the performance of American industry and commerce and its bright promise. (Nader, 260)

The consumer movement is important because it represents the interests of the consumer in a debate over consumer and product safety. Different values are upheld including the democratization of the diffusion and marketing of technological innovation that biases product safety. Their voices are hard to ignore in the dialogue and pose the

largest threat to economic logic in this subject because of the trust that the public interest has in these institutions. Attempts to change the consumer group philosophical position have been made by industry by trying to take over consumer groups in order to change their ideological framework. An example is the National Consumer's League, which was founded in the early 20<sup>th</sup> century by labor and consumer activists. It is estimated that over 39% of its current budget comes from corporate sponsors and "Almost every current project, seminar, brochure, newsletter and fundraising dinner is sponsored in large part by major corporations or industry associations, with some supplemental money coming in from labor unions." (Mokhiber, 1) Funding takeovers initiated by like minded corporate friends of the neo-classical tradition may be the only way of bringing these members of the dialogue over to the side of optimal regulation and liability for product safety. The notion of citizens having a democratic right to regulate safety is held paramount. The neo-classical notions do not fit in well within this paradigm and they get scant attention from these organizations.

### **The Engineering Profession**

The introduction of the notions of utility in developing regulatory schemes to manage product safety is further set back by unease found within the engineering discipline on the possibility of compromising product safety for greater levels of economic efficiency. Engineers do not seem thrilled with the concept of optimal product safety and oftentimes would prefer the advancement of strict product safety. The notion of there being an opportunity cost involved in advancing product safety is not held by the profession. The differences between the engineering discipline and management in the realm of product safety are especially acute because they manifest themselves within the same firm. Consumer groups have an important ally in the dialogue because engineers are the ones that have the technical capabilities to prove product safety lapses.

Engineers' emphasis on the importance of product safety can be seen by the various conventions that different engineering societies established. The American Society of Mechanical Engineers (ASME) is a 125,000-member organization that holds many technical conferences, teaches professional development courses and sets various industrial and manufacturing standards. The purpose of the ASME is "to be the premier

organization for promoting the art, science and practice of mechanical engineering throughout the world.” (asme.org/about) The organization developed a Code of Ethics for Engineers to uphold in their daily work. The first fundamental canon states that “Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.” The association also lists criteria for interpreting the canons. It also states that, “Engineers shall not approve or seal plans and/or specifications that are not of a design safe to the public health and welfare and in conformity with accepted engineering standards.” (ASME) Modern economics attempts to convince other sectors of society to agree with the efficacy of optimal product safety will have a tough time convincing this group because it conflicts with a duty that engineers are trained to uphold. Engineers are more receptive to measures that do the utmost to protect the consumer from unsafe products.

The differences between engineering and economics can be seen at the managerial level. An example of such tension is exemplified in the latest Ford/Firestone case. Engineers were oftentimes ignored when important decisions were made. Ford internal documents show that engineers were concerned with the Explorer’s rollover tendencies even before the car hit the market in 1991.

Public Citizen reports that on May 1, 1987 “A Ford internal memo states that the stability of the UN46 [Ford Explorer prototype] is worse than Bronco II and that it can be improved by widening, lowering and using a smaller P215 tire.” (PC, 1) On June 11, 1987 approval was given for the ATX Firestone tire design. Ford documents in Fall 1988 showed that the Explorer faced performance problems when tires were inflated at 35 psi and concluded that 26 psi should be used instead. But the load in the car must also be reduced if tire pressure is decreased. In addition, the ATX Firestone tire has a propensity to overheat at lower tire pressures while driving on the highway, which leads to tread separation and oftentimes roll-over of the vehicle. Engineers proposed many changes to help stabilize the Explorer, but only a few of the changes were made. The big changes necessary to improve safety were ignored by management. On March 2, an internal memo to Ford from Firestone stated, “in light of Ford’s decision to specify 26 psi in the P245 tire for the Explorer, Firestone has tested the vehicle at 26 psi front and 35 psi

rear...Calspan testing showed severe tread separation, but our testing used a more realistic procedure and we don't think it will be a problem." (PC, 2)

Engineers at Firestone subsequently found more problems with the tires while conducting a study late last year which uncovered a design problem with the shoulder pocket of the ATX tire. It is supposed to give traction for off road riding, however the steep angle of the shoulder pocket often induces cracking. This cracking can potentially spread to the other pocket of the tire. The engineers maintained that the tires would not be so deadly if the Ford Explorer didn't tend to roll over. Firestone did not use the resources provided by their in house engineers to test the tires immediately when the Firestone/Ford problem emerged years ago.

Much could have been done to prevent the Explorer's rollover tendencies. An article in *Business Week* explains how some luxury Sedans have electronic systems to prevent rollovers by automatically breaking when the system feels a rollover is imminent. Another big problem is that major engineering design changes can only hit the production line every five to seven years due to economic constraints. (Muller, 2) Management did not pay attention to engineering concerns and give authority for the product to be redesigned. Instead, it decided to rush the product to the market and hope for the best. By doing so, management severely prolonged the amount of time needed to rectify the problem. Since management doesn't agree that it should be held legally liable for safety problems, it doesn't feel the strong urge to rectify the problems. Engineers do not feel constrained by the balance sheet and the bottom line like management does. There is an element of artisan pride when designing a new product, rather than a focus on raw profit. There exists speculation that Ford ignored engineers' warnings due to profit considerations. The Explorer generates roughly \$5,000 per vehicle in profit and in fiscal year 1999 increased profits at Ford by \$2 Billion.

The engineering profession is uncomfortable with the idea of sacrificing safety for profit. Different norms are emphasized and weighted accordingly that are sometimes in disagreement with the theories advanced by the economics discipline. Safety is the constraint, rather than a notion of efficiency gauged by statistical evidence. Had the engineers been given more encouragement, Ford and Firestone might have been able to avoid the mess that this fiasco caused. More importantly, they would have avoided the

financial loss that ensued. There needs to be more cooperation between management and the engineers that work in the same firm. This way the corporation can work harder on producing a safe and sound product that will help reduce the number of problems down the road for the firm. Firm resources are not wasted as well. Strict liability and regulatory structures forces management to pay more attention to engineers and to act on their concerns in a proactive manner. A more market based efficient regulatory and liability approach marginalizes to a degree the importance of engineers in this dialogue because the legal profession wouldn't be able to rely as much on engineers in the discovery process of a product safety liability suit.

### **Non-Governmental Research Institutes**

The economics discipline has had more success in introducing their notions of efficiency and utility into the product safety debate in their conversation with non-governmental research institutes (NGRIs). There are numerous different NGRIs that take various stands in this debate. These organizations transcend the whole political spectrum including those that are conservative in nature like the Cato Institute and the Heritage Foundation to others that have left-leaning bents such as the Brookings Institution or the Center for Responsive Law. These organizations are able to play a leading role in formulating policy. More importantly, though, they serve as bridges connecting the different players within the product safety policy forum. These organizations also perform an educational role by providing timely information and opinions for governmental officials, the media and other policy elites. Academics move in and out of the main think tanks, and this is reflected in the positions taken by the various groups. NGRIs also fill their ranks with policy makers that go in and out of government. There are three main ideological positions that characterize most of the organizations that study product safety. Some uphold the neo-classical view of efficient regulation and try to balance consumer safety with consumer welfare and economic growth. Others are heavily influenced by the classical economic view and libertarian thought, and are simply opposed to government intrusion in the private domain. The third group is influenced by the institutionalist approach and legal structural thought.

The first group of NGRIs represent the middle ground in regard to product safety. A good example is the Brookings Institution, which serves as a forum providing resources for accomplished academics in hopes of producing pertinent and useful research. There are remnants of institutional thought within the organization. On the other hand, neo-classical economics also has a voice. The Brookings Institution is arguably the most prestigious and respected of the American NGRIs. It is a leader in conducting research and engaging in educational activities. This gives it an academic and scholarly character. The institution balances enthusiasm for product and consumer safety by advocating efficient and optimal regulation. Brookings' support for product safety is exemplified by its report on the "Government's 50 Greatest Endeavors" in the last fifty-years. The organization placed government's enhancement of consumer protection in the twentieth place. Consumer protection ranked ahead of governmental efforts to increase the stability of financial institutions and markets, and the promotion of space exploration. Brookings proudly lists thirteen different federal statutes that have increased government's power to regulate the safety of products. The organization also supports scholarly policy briefs and projects on issues like regulation. Here one can see the unease originating from certain parts of the institution over various regulatory rules and the nation's legal system overall. Brookings published a comparative legal study by Robert A. Kagan and Lee Axelrad, two economists from the University of California at Berkeley concluding that there is no firm evidence linking the US's strict legal code with improvements in corporate accountability. The mood at the institution appears to value product safety, but also looks to help reduce liability and regulation costs imposed on companies. Government is treated as an important actor in protecting consumer safety. However, many academics at the organization appear reluctant to give government a mandate to make corporations absolutely liable for their products. This position seems influenced by neo-classical economics voices employed at the institute.

The next group of NGRIs take a more conservative line in regard to product safety regulation and liability. They seem to depend on laissez-faire classical economics and libertarian thinking. Both institutions were founded in the 1970s and claim to be non-partisan. They arose at the same time that social regulation was significantly expanding in the 1960s and 1970s. The Heritage Foundation mission statement reads,

“The Heritage Foundation is a research and educational institute – a think tank – whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” ([www.heritage.org/whoweare/](http://www.heritage.org/whoweare/)) Unlike the Brookings Institution, these NGRIs are biased against government involvement and are sympathetic to theories advanced by Friedrich Hayek and Milton Friedman. The organizations interact with the academic discipline by inviting scholars to participate in their various activities. W. Kip Viscusi, the well known product safety economist, has written articles for the Cato Institute. The Institute publishes a handbook for Congress on various issues including tort law and its product safety applications. The institute is keen on reforming the US tort system. They view the application of tort law for product safety as a tax on productive activity and, “the more such rules are applied, the more productivity or wealth declines.” (Cato HB, 313) The institute claims that too often, “tort law assigns liability without fault, without causation, even without real damages. Most people agree that modern tort law discourages personal responsibility.” (Cato HB, 311) The Heritage Foundation expresses similar concerns. A paper by James K. Glassman for the Heritage Foundation stresses the importance of consumer choice. Government should not step in and make decisions for the consumer by regulating the safety of products. A Heritage Foundation study on regulation heavily criticizes social regulation including product safety:

Left unchecked, this regulatory expansion [social regulation] will have a negative impact on innovation and productivity and threaten America’s record-setting economy...Regulation increases the costs of employing workers and act as a tax on job creation and employment.

The Heritage Foundation believes that one of the first things that President Bush should do is regulatory reform. These two NGRIs would like to make regulatory schemes accountable. This message has resonance in the economics discipline, which furthers cooperation between the discipline and these two think tanks.

The third group of NGRIs are more sympathetic to a vigorous role for government in the economy and seek to expand the government's role in protecting consumers from dangerous products. The ideal of product safety is held paramount and the organizations look to the legal instead of the economics discipline for intellectual support. These positions resemble the structuralist and institutionalist positions now found in the legal discipline. These tend to be smaller "niche" think tanks and are not as well-endowed as the larger think tanks. However, they operate within a large web of different supportive organizations. Examples of these NGRIs are the Center for Study of Responsive Law (CFSRL) and the Center for the Advancement of Public Policy.

The CFSRL designs model legislation that it claims will protect consumers from dangerous products. The organization seeks to revitalize the US democracy and economy. It engages various topics from intellectual property to malaria control. One "model law" that it proposes is "The Consumer Protection Act." It supports the establishment of a Consumer Protection Organization to rectify the perceived lack of government attention to this issue. Such an organization would represent the interests of consumers before federal agencies. It would also keep large data-bases on potential safety problems, something that was lacking in the recent Ford/Firestone case. The CFSRL strongly opposes tort reform/deform. Echoing the structuralist view, it insists that government should serve as a tool used by the people to advance desired goals. Not surprisingly, the organization is heavily made up of lawyers.

Another think tank that has similar views is the Center for the Advancement of Public Policy, run by Ralph Estes, an accounting professor who believes that society's accounting principles are skewed. Ends he says should be stressed over means. The center:

promotes a more responsible capitalism by pressing corporations to become fully accountable to their stakeholders, employees, customers, communities, stockholders, suppliers, and the greater society (including the earth, its environment, and future generations), all of whom contribute significantly to corporate success or are affected significantly by corporate actions.

[\(www.caponline.org/\)](http://www.caponline.org/)

The structure of society is questioned, rather than regulatory structures. This NGRI's scope is broader than other think tanks when it comes to the issue of product safety. The economics discipline will have trouble making inroads into this group of NGRIs.

All of these organizations are very important within the policy debate. They help connect the various policy players. Many are highly responsive to the economics discipline when it comes to product safety. However, their level of support varies. The Brookings Institution takes a hands off approach and has a very academic character. The scholars working at the institute take different stands on the issue that sometimes conflict each other. The latter two groups are more ideological in nature. Their message is clearer and is targeted to a wider public without the need for their conclusions to be "translated" by another group like the media. Their policy papers are simple to read and for the most part give one side of the issue. The US is unique to have such a well developed NGRI structure. The economics discipline has benefited from its ability to use this infrastructure to transform economic theory into policy action. Despite not having a firm control over all of the NGRIs, the discipline's influence is heavily felt throughout the policy debate on product safety.

### **Public Opinion**

The wider public's attitudes and norms towards government's role in advancing product safety differ from those that the economics profession professes over the optimum levels of regulation and product safety. The public's perception is influenced by the media, government, academia, religious institutions, here-say and a whole array of other sources. Sometimes, this leads to a cloudy perception of the issues at hand. However, it also often permits a complex understanding of the merits of the policy solutions than does pure theory.

There is a notion among the general population of what may be called "fairness". Public opinion is shaped by this norm, which is embedded by different religious and academic institutions in society. Product safety is viewed more as a right by the public than a mere desire. Since product safety directly affects the general public, the concept is analyzed by the public in a personal manner. Opportunity costs are not tabulated with the

same level of sophistication and detachment as done by the economics discipline. Various doctrines influence public opinion including the social democratic, theological, moral and economic. When customer safety is at stake, cost benefit analyses are normally not undertaken by the general public to analyze the efficient regulatory structure or the efficient cost of human life. The general population has limited knowledge of economic principles like marginal productivity and rent-seeking. U.S. News and World Report cites a recent national test on economics principles. It reports that “two thirds of the 1,085 high school students who took it did not even know that the stock market is where people buy and sell shares...Worse, few understood that scarcity drives up prices or that money loses value in times of inflation...Average grade: F.” (Lord,1) This hurts the economics argument that consumers are rational and will correctly calculate their safety concerns into their personal utility maximizing functions. Humans tend to sympathize and relate more to anecdote, rather than general principles advocated by the economics discipline. Shawna Fruecht suffered great injury because she unknowingly, like many other Ford drivers, was driving in a vehicle with faulty tires. She describes her present medical situation and how:

many neurological problems have developed: I now am troubled by severe migraines; I have bladder related problems; I suffer from numbness and loss of sensation in my hands and legs; although I've never worn glasses in my life, my vision is now blurred. I am now going to physical therapy three times a week. I've had a CAT scan and am scheduled for an MRI and an EMG because my doctors are still trying to get a handle on the full extent of the nerve and disc problems I am having. I also have many appointments with urologists due to the hard hit to my abdomen. (Freucht, 1)

The general public reacted harshly to this and other statements from injured motorists. Louis Harris conducted a comprehensive study published in September 1999 gauging American attitudes towards auto safety and regulation. He notes that there is an increasing feeling among Americans that federal oversight and regulation of auto safety is “important.” The percentage of those surveyed taking such a view rose from 87% in

1996 to 93% in 1999. The survey sample was told that auto safety standards were set in the 1960s and that cars have greatly changed since then. It then asked whether it would “be wise to set new standards for auto safety, or should the old standards that have worked for 30 years not be changed?” (Harris, 3) Those responding to the poll thought 69% to 25% that new auto safety standards should be implemented. This is a resounding number and shows not only the importance of safety in the American mindset, but also demonstrates why government is given the democratic mandate to regulate product safety, albeit not always to efficient ends.

This public interest in the field of auto safety can also be seen by the large following of the Ford/Firestone Congressional investigation. A Gallup-poll conducted in early September 2000 found that 78% of Americans followed the Firestone case either very seriously or somewhat seriously. This level of attention was only surpassed by the Elian Gonzales story months earlier. The survey also discovered that 81% of Americans could name Firestone as the brand of tires involved in the investigation. 48% of those surveyed believed that there was criminal behavior by either Ford Motor Company or Firestone tire company that should be prosecuted in court. (Moore, 1) This underscores the enormous disconnect between economic notions and those of the general public since the vast majority of economists would probably not recommend criminal sanction in such a circumstance.

There are also many short-term costs during a product safety crises for the company under investigation. This is due to the public fear from the product. A Virginia car dealer said, “People are very skeptical about jumping into a Ford Explorer with Firestone tires on it...Unless the tires say Michelin, Goodyear or B.F. Goodrich, they’re not taking delivery.” (Johnson, 2) The brand is being deserted as customers prefer to buy what appears to be safer tires. A poll conducted around the time of the congressional investigation by CNW Marketing/Research of Ford/Firestone found that of 1,976 potential SUV buyers, more than 60% said they are unwilling to accept Firestone tires on Ford sport-utility vehicles. (Johnson, 2) A congressional investigation and an array of institutions analyzing unsafe products were needed for the public to reach this position. These institutions conditioned consumer rational choice. The problem lasted for over eight years and there was no significant change in consumer preferences for Ford

Explorers and Firestone tires. It was the democratic process that brought these concerns, reservations and fears to light.

A product safety crisis or investigation can have serious ramifications on the company in question. Brand trust must be built slowly after a crisis, which has direct consequences on sales, and seriously affects the company in question. CNW also found after conducting a poll of 2,900 people shopping for tires that only 5% would consider buying Firestone, which is down 20% from the time period before the fiasco. (Jones,2)

Public opinion is very important because in a democracy the public acts as the final arbitrator of government policy. Although the public is oftentimes distracted, elected politicians must still account for their sentiment or risk their own downfall. The different other contributors to the debate are aware of this fact and try to influence public opinion in a number of ways. Accessible websites, reader friendly publications or effective ads from the private sector, special interest groups and think tanks are just a few examples. However, the public still has a bias against corporations and favors more government regulation to less in order to attain the end of safety, rather than relying completely on the free market. Despite all the attempts made by the private sector and modern economics, there still seems to be a disconnect between public norms and those propagated by the economics discipline and the private sector. The economics discipline may also want to restudy human rationality and expand its own methodology to include those from other disciplines like psychology.

### **Popular Culture**

Concern over product safety has been imbedded into popular culture. However, its place in society's "background noise" is passive in nature. Product safety crises, and films as well as books dealing with the subject awaken the audience from what can be characterized as a state of amnesia in regard to the safety of the products they use and corporate behavior in general. In everyday life, there does not seem to be much resistance against unsafe products on the part of the general public until a large crisis such as the Ford/Firestone investigation and recall of last year strikes a chord in people's ear. The media covers product safety when there is a major story. Otherwise, consumers must get their information from publications like *Consumer Reports*, which only has a

limited following. Product safety is too technical of an issue to be actively followed and addressed by popular culture. It doesn't have the flare of fashion, the environment or soap-opera like political coverage. Product safety cannot be introduced into the popular culture in a raw form. Other mediums are much more affective in sensitizing the public towards the problem and possible solutions.

One such media is advertisement. When companies introduce safety features, they often like to expose these features to their potential consumers by diffusing this information to a wide target audience. Automobile companies frequently advertise their various safety features in the same manner that they advertise their product line's horsepower and acceleration. Entire advertisement campaigns revolve around the safety of the product. The web page for the Ford Explorer, used primarily as a marketing device, quotes Jim O'Connor, the Ford Division President, as saying, "The all-new Explorer for the 2002 model year continues to innovate-with technological improvements in safety, roominess, ride, and comfort, all intended to lead the industry into the future." Ford knows how important safety is for its consumers once the consumers have a preconceived notion that Ford is not advancing the safety levels to the point that society deems appropriate. It is probably not by chance that safety is placed first in the list of improvements. Some automobile brands even ring safety in buyers ears such as Volvos or Saabs. This sort of exposure through advertisement devices has helped elevate citizens' active demand for safe products. It is also a device that corporations feel comfortable with because they in conjunction with the market have a large control over the diffusion process of safety features. The firms are seen in favorable light by the consumer since they themselves are highlighting the safety benefits.

Another item that brings product safety out into the open and into the active popular culture is the iconization of those who fight for product safety. They receive a considerable amount of status and admirations in our society. Ralph Nader, a consumer advocate, is often called "Saint Ralph" for his unfettered attack against corporate wrongdoing. His rise to fame in the 1960s, when it was revealed that General Motors intimidated Nader as a young lawyer investigating automobile safety, has helped change the way people look at the corporations in charge of the safety of the product we use. It also helped rally substantial levels of popular support for the "Nader Raiders," who went

on to uncover what some in society label as corporate negligence. The amount of attention that such people receive in the popular culture is cyclical in nature depending on the nature of the product safety crises.

The wider public seems to mistrust corporate sincerity in advancing product safety. This notion is partly attributed to the popular attention that automobile investigations have received such as the Corvair in the 1960s, the fuel tank eruption dangers of the Ford Pinto in the 1970s, the side-saddle fuel tanks in various GM trucks in the 1980s and the recent Ford/Firestone investigation. Other dangerous products that were exposed to the public include Procter & Gamble's Rely Tampons in the 1980s and the Halcion drug in the 1990s. Even though these dangerous products only affect a small percentage of the population, their shortcomings are actively followed by society as a whole.

American culture has also been filled with books and films that show the little lawyer or muckraker, David, going against the robber baron or the evil corporation, Goliath. Popular culture personifies and creates heroes out of the person who is trying to stop evil transgressions. More importantly, these films and books help create the impression that corporations have too much power in American society and that this power should be matched by countervailing forces.

"Erin Brockovich" is a movie based on a true story about a legal assistant with the same name who works in a mid-size law firm. She accidentally discovers a mysterious medical file in a routine property deal involving the power company PG&E. The audience learns later that the firm polluted the land around its plant and tried to cover this up by buying the houses in the vicinity. However, neighbors of the plant had already begun to fall ill. An add for the film says, "As a struggling mom, Erin uses her driving sense of justice, her innate smarts and her passion to take on a large corporation." She is able to surpass all odds in order to reach a just settlement. In the movie, Brockovich even gives a convincing and understandable explanation over why tort law is efficacious to society and explains the reasons lawyers charge so much; in order to recoup expenses and hedge against chances of not winning. This subliminal message sending does wonders for the structural position.

Another true legal story, turned into both a best selling book and a blockbuster movie, is “A Civil Action.” Jan Schlichtmann, a lawyer helping eight families in New England recover damages from two large corporations, W.R. Grace & CO. and Beatrice Foods. These companies were accused of poisoning the ground water in their area of operation. Schlichtmann was trying to prove the potential linkage of this contamination to a high incidence of cancer in the area. Schlichtmann is glamorized in the storyline, while the management of the firms are looked upon in dim light. Even though this film does not involve product safety, it highlights corporate misbehavior, which gives wait to the structuralist view that society needs institutional forces to deter such misbehavior, whether it is in the form of unsafe products or unsafe levels of pollution.

Many books have been written exposing product safety lapses in American society. One of the most famous is by the Muckraker Upton Sinclair, called *The Jungle*, who shows through fiction the unsanitary conditions of the meat packing industry. This book led to the creation of new laws such as the Meat Inspection Act of 1906. (Pontell, 62) Nader’s *Unsafe at Any Speed* is also a household name in the US and was widely read at publication.

The different mediums that make up popular culture affect public opinion towards corporations, which is often highly critical. DecisionQuest, a legal research firm, found that 75.6% of potential jurors believed that executives of large corporations attempt to cover up the harm that they do. (Magnier, 2) This is very serious for corporations and explains why some have developed annual social reports and resorted to philanthropy to improve their public image. *Business Week* reported that almost three-quarters of the American population believe that business has gained too much power over their lives. The magazine blames this sentiment not because prosperity is lacking, but rather:

It has to do with corporations being in their faces all the time while not delivering on service...People increasingly feel threatened by the products and services sold by corporations...People buy Ford Explorers, in part, for safety only to see Ford Motors Co. and Bridgestone/Firestone Inc. engage in finger-pointing while customers must wait months for new tires (and Ford CEO Jacques Nasser refuses to testify before Congress). (Editorial, BW, 1-2)

When a big government investigation comes around focusing on large corporations and the harm it inflicts on society, the general population has already been conditioned by these mediums found in the popular culture. Their senses are reawakened and a harsh reaction ensues. Afterwards, amnesia takes hold again until another crisis, real or fictional, reawakens the general population. Product safety is passively found in popular culture, which is awakened routinely by different forms of cultural expression including real-life coverage of events, anecdotal evidence, fiction and films.

These mediums are easy for the general public to digest. Their impact is greater than that of an empirical analysis on product safety. This is also a segment of the dialogue where the economics discipline has a comparative disadvantage. A movie about Goliath going against David would not receive the same sort of following as it does the other way around. Society seems to demand a good vs. evil storyline.

Some anecdotal evidence supporting economics positions, though, can be heard, i.e. the story about baseball coaches that no longer want to coach Little League due to liability fears. Pro-market fiction such as the books by Ayn Rand does have a following. However, this following is rather small compared to the following of mediums that show a market-critical position in regard to its ability to advance product safety. Pro-market fiction does not stand up well to images of Erin Brockovich and the sick children dying at the hand of corporate negligence. Consumer groups are able to rally good segments of the populations because the popular culture is already conditioned to think that big business intrinsically deviates from proper behavior. This negative perception of corporate behavior is bad for industry because it conditions jurors and others in society that may in the future be in the position to take action against corporations to do so due to this bias. It also makes life hard for economists trying to convince the wider public to believe in the power of the free market. However, the private sector and the economics discipline can take solace in the fact that the general public has a short memory when it comes to product safety lapses and corporate misbehavior. This allows an introduction of market based notions into popular debate to balance out the conversation.

## **The Mass Media**

The public lives in a media saturated world. The press plays an important role in formulating public opinion. The wider public demands information, but would like it conveyed in the form of entertainment. The media routinely writes stories relating to product safety and what measures should be taken to uphold this end. However, coverage of product safety is too often done in a sensational manner. Oftentimes, further analysis including economic principles is clouded by anecdotes and images. Sensational coverage is not found across the board and there do exist some media, mainly print, that base their coverage on economic logic. If modern economics wants to convey its core theories to a broader public, however, it must do a better job convincing the news media that its principles of maximizing economic efficiency should be considered during the coverage of policy issues like product safety.

The media has been endowed with an important responsibility in the policy discussion over product safety. It has a unique role in its ability to send the message out to consumers that some of the products they use potentially pose a high risk. Government agencies are often constrained financially and politically from actively spreading product safety information. Think tanks do not have the publicity capabilities to carry this out, either. The media has a special role because it has to determine what is the appropriate risk consumers should bear from the products they use and when to publicize products whose risk surpasses this level.

The scope of the entertainment a particular medium provides is largely a function of its target audience. The media that heavily backs up its reporting with economic principles normally has a target audience whose members have been trained in economics or have interests in the fields of economics or business. There is less dramatization, which also reflects the sobriety of the readership. The audience for these media has recently expanded with the increase in popular equity ownership in the United States and in Western Europe. *Business Week*, *The Economist* and *The Wall Street Journal* are examples of such publications.

Corporate interests, efficiency and economic growth seem to be held in high esteem by the editorial and journalistic staff of these organizations. *The Economist* routinely writes about the ills of the US tort system. In “The People v America Inc” the

weekly tries to show the readers the problems that emerge when litigation is used for regulatory control. “On the face of it, why shouldn’t a company that does something wrong pay the price?” (*The Economist*, 3/22/01) It spends the rest of the article reciting many of the same reasons that economists use when they are attacking tort law including dramatic increases in liability insurance, unpredictability and losses in efficiency. These media often give the benefit of the doubt to the corporate actors. Joan Claybrook, the head of Public Citizen, complained in a letter to the editor of *Business Week* that on October 16, an article by Stan Crook, “blames everyone but Ford Motor Co. and Firestone-the true culprits-for the deaths of 119 people and injuries to 500 in crashes caused by tire separations.” (Claybrook, 11/13/00) *Business Week* even published an article entitled, “Did Explorer get a Bad Rap on Safety” in an attempt to re-evaluate how corporate actors like Ford are treated by society during product safety investigations. The economics discipline is also able to introduce economic principles through guest columns. For example, Gary Becker writes columns for *Business Week*. The economics discipline’s ability to influence this part of the media is vital in the debate over product safety. The discipline can be sure to have an outlet where it can distribute its message on different public policy questions.

Other media groups try to offer their audience coverage with more entertainment value. Russell Mokhiber, editor of the *Corporate Crime Reporter* published in Washington, DC says that the media picks up on episodic events. “Reporters do not cover the regulatory agencies or the Consumer Product Safety Commission. If a lot of people are killed or there is a congressional investigation, then the press pays more attention.” (Mokhiber, 3/18/01) His position sounds very familiar to others like Michael C. Jensen in “Toward a Theory of the Press” arguing that there has to be an element of entertainment in news coverage. Mokhiber calls this “infotainment.” Product safety is heavily personified by the media. The coverage of the Ford/Firestone case often focused on the lives of the victims and how they have to cope with their injuries. The media is able to make the statistics come to life. The institution as a whole is also much more critical toward business actors. A *New York Times* editorial castigating Ford provides an illustrative example:

Ford's failure to share news of recalls overseas with American regulators is not acceptable behavior. United States laws should compel a multinational company to advise American regulators of a recall of an unsafe consumer product in another country when that product is also sold domestically(NYT, 9/7/00)

The editorial also shows the newspaper's distrust of an over-reliance on the free market to fix product safety problems:

The highway safety agency was sluggish in reacting to a number of tips about this case, which may be a result of severe budgetary cuts over the past two decades. If so, this unfolding story should remind Congress that when it comes to safety, free markets are no substitutes for an adequately funded federal watchdog(NYT, 9/7/00)

These media sense that their audience values other things besides economic efficiency and this is reflected in its reporting and editorials.

The press' power to influence has its limits, though. An unprecedented amount of attention was devoted to the Ford/Firestone case and there were repeated calls for revamping the current auto legislation. Mokhiber points out, though, "The bill that ended up being passed was worse."(Mokhiber, 3/18/00) More attention needs to be placed on the details of a product safety crisis so that members of the dialogue can construct an efficacious policy that promotes product safety and benefits all parties in the long run. *Brill's Content*, the magazine famous for its coverage of the press, pondered over why it took four years from the time the local press covered the Ford/Firestone issue for the national press to pick up the story. Some believe that the media doesn't spend enough time on issues relating to product safety. Russell Mokhiber gives one possible answer to this question:

When the Consumer Product Safety Commission (CPSC) puts out a press release announcing the recall of a faulty product, that press release must first be approved by the manufacturer of the product...Often, CPSC's press releases are so watered down that reporters see nothing of interest. (Mokhiber, 10/30/00)

Despite the ills that may plague the journalistic profession, it still serves as a powerful and useful watchdog. It fills a vacuum left by the government. The press has always investigated critical problems in society and has acted as a catalyst for needed change. Other institutions cannot be trusted to act as watchdogs, which lends support to the need for a free and competent press in order to achieve a functioning and thriving capitalistic economy. Rep. Heather A. Wilson asked, “Why didn’t the watchdog bark?” in response to why it took so long for government to act in the Ford/Firestone case even though the tire and turnover problems go back to the early 1990s. In an editorial, the Buffalo News wrote:

The official answer is that the number of reported incidents fell below the NHTSA threshold for an investigation, and that it wasn’t until after a Houston television report last February that complaints started to roll in. That’s pretty lame. Maybe we should be thankful that Texas TV is better at spotting international problems than the federal government is. (Buffalo News, 10/2/00)

The press has an ability to project different messages out to the public. It also can sift through complicated issues and give a quick and concise account of the problems at hand. It may not always stress the principles supported by the economics discipline, but it often helps serve the end that members of the discussion on particular issues wish to see addressed. The internet has allowed individuals to attain an even wider perspective on the issues of the day and the scope of the media has enlarged drastically.

The mass media still greatly influences American public opinion. It tries not to introduce systemic distortions in the policy debate over product safety. It rather brings the statistics that too often are overlooked by the economics discipline to life. The media complicates attempts made by economists to introduce their discipline’s principles in the product safety debate. Trying to convey concepts like the need to conduct cost-benefit analysis of existing regulation and liability structures is hard when the wider public is learning about the personal lives of victims of defective products. The wider media is large enough to give the critical reader the ability to fully grasp most issues at hand. The

only place where distortions might arise is with public opinion since much of the population receives their information from rather limited and filtered media. However, the policy dialogue on product safety has shown that it can isolate itself from public opinion, especially in the case of the Ford/Firestone congressional investigation and subsequent legislation. Overall the economics profession has done a good job in inserting its views into the media presentation on product safety through direct involvement by writing columns or indirectly by assisting journalists understand the economic issues at hand. Although economics cannot compete with sensational events on the national level, the follow up stories often are heavily influenced by the discipline. Its ability to continue this trend is important if it plans to reach a consensus within the dialogue on product safety over the need to introduce efficiency and optimization into the regulatory process.

## **Government**

The government's position on issues relating to product safety is sporadic and many times differs from the consensus found within the economics discipline. However, the final policy prescriptions often follow predictable economic logic. Government is constrained to a large extent by the will and the sentiment of the polity when debating government policies and regulations. Congressional investigations normally occur after a strong public outcry against a harmful product or behavior. The Ford/Firestone case occurred during the last leg of many congressional election campaigns and put pressure on elected officials in Washington to look into questions concerning the potential problem of unsafe automobiles on the nation's highways. More importantly, they were forced to reconsider how product safety and liability is treated by society. Government is also influenced by the financial and political muscle of industry. For this reason, it pays considerable attention to industry needs. Public interest groups and industry organizations like the U.S. Chamber of Congress vie to influence government decision-making and steer it in their respective direction.

Government attempts to construct efficient product safety regulations has had a inconsistent correlation with contemporary economics interpretation of an efficient regulatory body. Public sentiment swings rapidly and support for regulation or

deregulation is often cyclical. Ever since automobile usage became popular, there has been concern over auto safety. This sentiment reached all time highs when Ralph Nader in 1965 wrote the best selling book, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile*. Due to the public outcry heard clearly by Congress, many safety laws were passed that sought to regulate automobile production with the aim of making these products safer. The events in the 1960s also brought the concept of auto safety regulations into the mainstream policy realm. However, starting in the 1970s, there have been many attempts to roll back these forms legislation. Governmental bodies are forced to navigate through this debate and many view contemporary economics as a useful “guide.”

The executive branch of government has the final discretion over how regulatory policy should be carried out. The Council of Economics Advisers heavily influences the executive branch’s economic policy. The CEA is a three-member body formed by the Employment Act of 1946 to assist and advise the president in the nation’s economic affairs. The council channels the latest in economic thought into the public policy and government decision-making realm. The CEA’s stand on regulation and more specifically product liability is very similar to that of mainstream economics. They agree that constraints on economic behavior should be analyzed for their potential costs and benefits. Means should not outweigh the ends.

Every year, the council publishes *The Annual Report of the Council of Economic Advisers*, which outlines the major economic positions of the executive during a given year. It is a useful guide for analyzing the economic philosophy that is guiding the executive branch. The council recognizes that some forms of regulation are needed to preserve the greater public interest. The CEA, though, believes that more market mechanisms should be introduced in order to assist regulatory goals and ends. In this way, they hope that government can achieve society’s social goals in an efficient manner. (Frankel, 189.) These economists often take the middle ground in their policy recommendations, refraining from extreme views such as wishing for substantial government disengagement from private affairs. This balance is underscored in the 1996 report. They believe that government is useful in its unique ability to enforce contracts, discourage fraud, ensure property rights, and correct market inefficiencies and

information asymmetries. The CEA is not as critical towards tort law as many other economists in academia. For the most part, it doesn't espouse the concept of "efficiency über alles". The council is also insulated from many forms of public pressure that other governmental bodies must constantly face. This gives it the impression of impartiality and balanced judgement.

The Office of Management and Budget (OMB) has also worked on judging the merits of social regulation. The OMB agrees with the mainstream economists' stance in regard to regulation believing it should be quantifiably justified. The regulatory approach should be the most cost-effective approach, where potential benefits to society ought to justify the costs.(OMB, 3) Legislation and executive orders have also been passed to economize regulation including the "Unfunded Mandates Reform Act of 1995."

The Federal Trade Commission (FTC) also deals heavily with the issue of product safety. The commission enforces basic consumer protection statutes that maintain "unfair or deceptive acts or practices in or affecting commerce are declared unlawful." (15 U.S.C. Sec.45(a)(1)). The FTC defines "unfair" statutes to be those that "cause or [are] likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.(15U.S.C.Sec.45(n))" Within the FTC, there is a Bureau of Economics that helps the FTC gauge the economic effectiveness of its actions. Once cost benefit analysis are conducted based on the statute mentioned above the FTC can use various enforcement capabilities including adjudication, administrative trials and civil penalties.

There are subtle ideological differences between the Democrats and Republicans on the subject of product safety regulation. However, their guiding philosophy in both cases is derived from modern economics. It is in the application of regulation that partisan disagreements emerge. The new Bush administration is more conservative in its regulatory approach and is now undertaking a review of recently passed regulation. Third parties such as the Green Party believe that government should be more proactive in its regulatory approach and advocates stricter punishments for those who knowingly produce unsafe products that cause serious injury or death. Such punishment could even include criminal sanction, something that has been forcefully argued against by members of the economics discipline.

The executive has power to channel global public policy by manipulating the influential relationship that the Treasury Department has with international institutions like the World Bank and the IMF. It also has vast market power through its procurement practices to promote desirable product safety ends. Those interested in this debate have further incentive to influence government decision making.

The Department of Transportation concerns itself with automobile product safety and liability. The National Traffic and Motor Vehicle Safety Act of 1996 paved the way for the establishment of the National Highway and Traffic Safety Administration(NHTSA). This agency was given unprecedented power to enforce design standards in order to decrease the nation's automobile accident toll. It investigates safety defects in automobiles, and establishes and monitors performance standards. It is both an information gatherer and an enforcer. However, the body has recently complained of lack of authority. Dr. Sue Baily, the Administrator of NHTSA, asked Congress to update standards for tires so incidents like the Ford/Firestone need not reoccur. (Baily, 2)

The Department of Transportation states on its web site that the department "touches the public through its mission of ensuring that our various modes of transportation operate safely on an individual basis and together as an interlinked transportation system." (<http://www.dot.gov/safety.html>) Rodney E. Slater, former Secretary of the Department of Transportation, declared that safety, "is our top transportation priority. It is the North Star by which we are guided by and willing to be judged." (Slater, 1) One can jump to the conclusion upon hearing such statements that the executive branch is deeply conscious of consumer safety issues to the extent that it values safety over economic efficiency. However, the Clinton-Gore administration sought to work together with industry in order to promote safety and efficiency in the automotive industry. Slater believes that more government regulation should be enacted to promote industry compliance. Civil penalties should be increased for violating the law and manufacturer product testing ought to be increased. His suggestions, though, fall for the most part within the range of those acceptable by contemporary economics.

Government departments and agencies have to deal with issues that are often not introduced into economic models. Foul-play and misbehavior are generally left out of economic analysis. Governmental regulators, though, have had to cope with such

problems routinely. Some observers complain that these bodies lack regulatory enforcement power to maintain the needed transparency to fulfill their missions. Automobile companies have been notorious for cheating on various regulatory tests, which has hurt both the long run reputation of many firms but more importantly has broken the trust in the enforcement ability of governmental bodies. Ford is not alone on this point and as Clarence Ditlow, Director of the Center for Auto Safety, remarked in his testimony before the Senate Commerce, Science & Transportation Committee, "All manufacturers conceal information from NHTSA and the public." Mitsubishi had a double book keeping system that aided it in hiding consumer complaints. Volvo was fined last year for not providing dealer bulletins to the NHTSA as required by law. The list of manufactures that have concealed information from the government includes Honda, GM, Chrysler and Toyota. There exists a transparency problem that ends up affecting consumers, input producers, share-holders and others in society. Government agencies are unable to obtain a complete set of data for effective decision making.

Congress plays a major role in outlining the scope of product liability. This was especially true when it acted as the primary public forum in the investigation of the Ford/Firestone ordeal. The legislative branch of government wanted to see if the tragedy was related to incentive problems within the economy. This debate was lively and full of both colorful and sometimes charged language, which is not present in general economics literature. The scope of the investigation was larger than it would have been if conducted by economists. Instead of relying solely on cost-benefit analysis of existing regulation, sentimental factors were taken into account due to the media attention of family members of the victims. The opportunity cost of not having strict regulation and liability appeared to be higher afterwards. This forum also gave the opportunity for a democratic society to convene and generate ideas to protect the population from dangerous products. Heads of Ford, Firestone, Public Citizen, Consumer Union and regulatory bodies all participated in the hearings. A general consensus existed over the gravity of the problem and the need for legislative change. The process was a big embarrassment for both Ford and Firestone. Many congressional members advocated tough regulatory measures that included criminal penalties to prevent future accident deaths and injuries. By the end of the process, the industry friendly House Bill was passed, which for the most part

mimicked prior legislation. The tougher measures belonging to the Senate Bill did not see the light of day. Most economists would be happy with this outcome because it affirms their view that expensive forms of regulation should not be enacted for fear of a greater loss to society and economic efficiency. The manner in which the Senate bill was circumvented also highlights the importance and influence of economic thought in society today.

The judicial system has also played a large role in the domain of product safety and has helped form an institutional framework that gives automobile corporations a clearer idea of what society expects from them. It gives consumers power to directly hold corporations responsible for product safety. The court system is the ultimate arbitrator of product liability. The legal position towards corporate product liability is often not in line with the position of contemporary economics. The courts have upheld tort law and it is used extensively to arbitrate product liability cases. There have been attempts to pass legislation that would substantially hinder the power of tort law, but so far such attempts have been fruitless. This has been the most contentious and divisive issue between the economics discipline and the government.

The government bureaucracy for the most part is highly partial towards economics. Economists are working in all sectors of government and their influence has been greatly felt. The need to economize regulation has been a hot topic recently and will remain one for some time to come. This has opened the doors in government for the economics discipline. Only when public policy crises occur that underscore possible flaws in the current regulatory economic regime does government feel the temptation to swing and espouse views not generally supported by economics. The merits of regulatory reform has not yet been settled and the governmental domain will continue to serve as a venue for the product safety regulatory debate. The government's position towards the neo-classical notion of efficient product safety is not entirely clear. The neo-classical view is making inroads into much of the executive branch of government. However, institutional and structural views are still maintained by the certain regulatory agencies within government and the judicial branch. This heterogeneity of positions reflects the overall dialogue and the inability to reach a consensus over the policies that should be implemented to promote product safety.

## **International Institutions**

International institutions are even more influenced by the economics discipline than is the American government. This can be seen by the manner by which they handle product safety issues in their formulation of global economic policy. This link is very important for the field of economics since these organizations not only play advisory roles to many countries in the world, but they also set up the common framework for lending privileges to most countries. Recently, these organizations have had to deal explicitly with the contentious issue of product safety liability and regulation.

International organizations function as public policy decision-making bodies. However, they differ from national governments since they are, in many respects, free from the popular constraints and the media spotlight that national governments deal with when formulating policy. The most prominent international institutions are the World Trade Organization, the World Bank, the IMF, the UN, and the OECD. These international organizations are heavily influenced by the economics discipline. However, the way in which they specifically engage the discipline varies. The institutions for the most part do not get into the nitty-gritty of specific product safety issues, but rather make broad policy recommendations. As trade becomes increasingly more and more global, attempts have been made to construct an international product safety regime. This would cut down on transaction costs and make the global market for goods more efficient, stable and predictable. The economics discipline's influence over certain parts of the US government including the Treasury Department enables its influence to be heavily felt in the international domain.

The World Trade Organization is strongly influenced by the economics profession since the concept in which it is based had its origins from within the discipline. It seeks to ensure that trade flows "smoothly, predictably and as freely as possible." ( wto.org) The organization wants to promote stability and predictability in the world-trading system. This organization seeks to reduce barriers to trade, and it is concerned over arbitrary determination of product standards which could double as national tools of protection. What were once considered national concerns like agriculture subsidies, intellectual property rights, and food and product safety standards are entering the realm

of the international debate on standards. The organization has 134 members and 30 observers. Differences in economic, regulatory, and legal structures in various countries create problems for the free flow of goods and services. The organization deals with trade foremost and attempts to fit social concerns like product safety into the free trade paradigm. One of the WTO's main documents is the Agreement on Technical Barriers, which was enacted to reduce obstacles to trade that may take the form of regulations, standards, and testing and certification procedures. The organization also worries that too many standards will complicate business relations for producers and exporters. The WTO acknowledges countries' right to establish standards that they deem appropriate for human, animal and plant life protection, or to meet consumer interests. However, in an attempt to decrease red tape, the body recommends countries adopt international standards. Although harmonization of standards seems quite benign, it is highly contentious and is still being debated in the policy forum. The process is often criticized for imposing constraints on national laws and causing a "race to the bottom" by adopting the lowest denominator standards.

The WTO, unlike its predecessor the GATT, has an arbitration committee that settles trade disputes. It attempts to transfer regulatory autonomy from the domestic authorities to the supranational body. The WTO arbitration committee is comprised of experts within the field who are chosen to arbitrate the dispute. The burden of proof is on the safety benefits of the regulation. Its ruling has serious implications that ripple throughout the economy. The unchecked power of the organization is often criticized and its arbitration methods are said to lack transparency. The WTO also now takes cash from private entities, which critics say might further affect its presumed impartiality. The big question, often posed, is who is the fair arbitrator of the efficiency of the regulation. The WTO believes that it is a fair arbitrator and lobbies national government for more authority to exercise this power. However, other participants in the dialogue on product safety disagree with the WTO. They worry that national autonomy meant to control product safety may be transferred to an undemocratic and biased entity that would enact measures that would not promote enough safety. They do not want international law to trump national laws especially in the case of tort law.

The United Nations and its various policy-making bodies have also addressed the product safety and consumer protection issue. The Economic and Social Council of the UN has taken different stands on the merits of consumer protection that do not always take the line supported by the economics discipline. It urges governments to continue efforts to provide consumer protection to their citizens. The General Assembly passed a resolution on April 9, 1985 outlining an internationally recognized regulatory framework. The resolution was passed with the intent to introduce “fair and reasonable standards covering physical safety; the promotion and protection of consumers’ economic interests; standards for the safety and quality of goods and services; distribution facilities; redress; and education and information.” (UN, 1997) The UN also strives to increase international cooperation in order to fulfill these goals. It affirms the national governments’ role in protecting consumer rights and outlines protective measures to help induce less developed economies to adopt the standards. The UN has taken pride that by 1998, forty African countries have more than 80 consumer protection organizations and consumer rights are recognized in 13 Latin American and Caribbean countries. The UN does not have much enforcement power in contrast with the WTO. Instead, it mainly functions as a voice vying for influence. Since General Assembly resolutions are not binding, governments need not worry so much about the terms of its resolutions. A later Secretary General report recommends the following policies to advance product safety.

“Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Government should also consider ways of ensuring that consumers are properly informed of such hazards.” (UN, 1998)

This is a strong affirmation of consumer rights superceding many economic rights.

Modern economics, though, is beginning to make inroads into the UN. Koffi Annan, the UN Secretary General, showed sympathy to popular economic positions by saying to business leaders at the annual Davos Forum, “More importantly, perhaps, is

what we can do in the political arena, to help make the case for and maintain an environment which favors trade and open markets.” (Nader, 2)

The OECD is focussed on economics issues. It publishes thousands of studies on issues as varied as electronic commerce and international development. Consumer safety regulation and product liability is an issue heavily discussed across the developed world. The OECD gives these countries a forum, where they can refine economic policy in order to best meet their policy needs. The organization is heavily staffed with economists and generates many economic reports every year. The OECD outlines different requirements for a regulation to be efficient. The safety problem must be clearly identified and a cost-benefit analysis must be completed with alternatives to regulation and transaction costs included in the analysis. They have a 10-question regulation test that is similar to one that modern economics would support.

Developed countries participating in the OECD forum feel pressure to achieve greater economic results in the increasingly competitive market. The OECD advocates regulatory reform throughout the various sectors of the economy. The organization claims that both economic interests and social interests should be promoted. Echoing the concerns of many economists, the organization is concerned that regulations can work against these two goals and that global regulatory regimes need to be reexamined. One report says, “All governments have a continuing responsibility to review their own regulations and regulatory structures and processes to ensure that they promote efficiently and effectively the economic and social well being of their people.”

The World Bank and the IMF are also organizations that are heavily influenced by the economics discipline. Their ranks are largely filled by economists through their young professionals program, where entrance requires for the most part a PHD in economics. There also exist many links between the academic discipline, the bank and the fund. These two organizations along with the US Treasury Department form what has been called the “Washington Consensus.” They uphold the economics discipline’s line on product safety and propose an efficient regulatory structure. They discourage inefficient and duplicative testing and certification requirements because “they represent significant costs to manufacturers, consumers and society.” (WB, 2) These organizations try to juggle the noble goal of product safety with consumer welfare and

the overall welfare of society. The World Bank and IMF are important tools for policy makers because these organizations can mold policies in developing countries to their liking.

International organizations play a meaningful role in formulating global public policy. This is definitely the case with product safety regulation and liability. The economics discipline is able to help shape policy formation in regard to product safety through these organizations due to the power and influence that they have internationally. These organizations listen attentively to the economics discipline's positions on optimal regulation and product safety. International institutions do not face the level of scrutiny that national governments face. Ironically, though, they are incrementally receiving the power to trump national decision making. The economics discipline can influence the policies of these institutions without having to worry about what some economists view as an ill-informed democratic polity that may make ill-judged choices based on emotion and ignorance. Through a process of harmonization of standards arbitrated at the multilateral level, the democratic process of determining the economic landscape can be bypassed. With the exception of the UN, these organizations project the economics discipline's position on optimal product safety and are important contributors to the discussion. Since product safety is also an international issue, this gives the discipline a head start within the international debate over optimal product safety. Depending on the future of international law, this could be quite substantial for the economics discipline and its efforts to make regulatory and liability changes.

## **Conclusion**

Attempts by the economics discipline to introduce the notions of efficient regulation and optimal levels of product safety into this dialogue is being met by tough resistance from various participants in the discussion. At first glance, the dialogue seems technical in nature, but upon further analysis, the conversation over what sort of policy prescriptions government should advance is much more encompassing, involved and highly relevant to the vibrancy of our economic system. The achievement of reliable product safety in an advanced industrial society involves numerous policy tools, many of which are highly contested by the economics discipline for being inefficient and

unpredictable. There is a general agreement that product safety relies on two basic principles: the integrity of the product to the extent that it affects both the users and bystanders' personal safety, and the diffusion to the market of product safety features and technologies in a relatively rapid manner. However, what is contested are the appropriate mechanism to force upon the achievement of product safety.

The various dialogue participants disagree on numerous aspects in regard to the debate, which makes coming to a consensus hard. Only a few examples need exemplify this point. There is general agreement that transparency on the part of product manufacturers is necessary. However, disagreement exists over what sort of means should be used to achieve this end. Consumer groups and members of the legal discipline would emphasize the importance of regulatory institutions and the discovery period found in tort law suits to increase transparency. Otherwise, companies won't have much incentive to divulge product safety information. Members of the economics discipline and private sector, though, sway towards the belief that the market will force companies to act in a transparent fashion. Competition will force companies to divulge any secrets they have. In remote cases where this is not the case, efficient regulation can be established once it passes stringent cost-benefit analysis requirements.

There are also conflicting views over the causality of the insurance crisis in America. One side of the dialogue blames it on the American legal system, while other members in the dialogue believe that this crisis is caused by mismanagement on the part of the insurance industry. They believe that certain tools advancing product safety are scapegoated for industry interests. Regulatory bodies are also viewed in different light. Economists fear that such institutions might have a proclivity to act in a rent-seeking manner. However, others in the dialogue who are influenced by structural logic disagree, and rather believe that these institutions are integral to the advancement of product safety.

These opposing positions underscore the view that the economics discipline still has work ahead of it if it wishes to convince more members of the policy dialogue over its notions of optimal product safety and efficient regulation. What is constraining the economic discipline is not its ability to project its theory to a wider public. It is rather the strong roots that institutional and structural thought have in American society that are

blocking the overall acceptance of neo-classical economic principles. Institutional and structural logic will be tough to dislodge.

There appears to be a general feeling embedded in society that there are evil actors that government should help constrain. Countervailing forces are needed to protect citizens from those that have harmful pecuniary designs. This mental construct can be found in the legal discipline, within engineering, the media, certain think tanks, popular culture and most importantly consumer groups. Aggregated, these various dialogue participants are too important to be ignored and mount a serious political challenge to those advocating strict neo-classical methods of product safety advancement. Moreover, attempts to change their position in regard to this theme have made only modest inroads.

On the other hand, the economics discipline is not coming to this dialogue from a position of weakness. The discipline has many powerful allies including the private sector, various think tanks, elements from the media and many international organizations. Even though the Ford/Firestone crisis created an uproar in Congress, the private sector, relying on economic principles, was able to block the passage of the stricter Senate version of the auto safety bill. It must be said, though, that the inability for the dialogue to reach a consensus has created an uneasy status quo, which has made product safety a divisive issue amongst the different branches of government.

The unfortunate state of this dialogue is the fact that many of these positions are irreconcilable, which does not bode well for those who want strict product safety enhancement or those who want more efficient product safety regulations. The conversation is at an advanced level and integrates many academic concepts drawn primarily from economics and the law. The conflict found in this topic reflects the differences in the legal and economic discipline. While economics has a single-minded focus that constrains policy discussion to an efficiency-maximizing paradigm, the legal discipline is more comprehensive taking into account past historical and institutional realities. These groups define the parameters of the debate and help establish an argumentative framework for the other participants to use. The other groups play integral roles in information gathering, acting as a watch-dog, enforcement, consulting, analysis, and legislation construction.

Consumer groups draw attention to a product safety problem and try to come up with policy prescriptions. The media projects this problem to a large segment of the polity. Think tanks try to come up with mature policy positions that would interest and inform other members of the dialogue. The wider public reacts and forces government to take a stand on how to protect its safety. Government reacts in turn, but is heavily constrained by the interests of the private sector and economic rational. In the meantime, those in the legal profession start a paper trail that will increase the transparency of corporate action and potentially punish corporations for their socially irresponsible behavior. The legal discipline has the power to bypass Congress. This threatens the private sector, which in turn works extra hard to influence the conversation. In the end no one is really happy. However, economic efficiency and product safety are still maintained, even though they may not be maximized.

Possibly this lack of a consensus represents an uneasy balance of power between the various interests involved in the policy discussion. The in-fighting present in the dialogue enables the US to have arguably one of the best if not the best product safety regimes in the entire world when one considers the amount that is produced and consumed in this country. At the same time, the US is one of the less bureaucratic countries in the world, where economic freedom and efficiency are both prized and advanced.

The conversation could potentially remain deadlocked for some time to come and economists have two possible paths to take in order to advance their theories into real policy action if they are not happy with the status quo. The first option would be to focus more on efforts to determine product safety standards on the multilateral level, further away from the dialogue's area of operation. In this manner, they will be able to circumvent much of the popular opposition to their efficiency maximizing market-based theories. International institutions, especially the WTO, are receptive to economic doctrine. There is also little congressional or judicial oversight to make sure that popular interests are taken into consideration at the multilateral level. Optimal product safety could be achieved and economic efficiency increased. Potentially, multilateral arbitration by WTO committees could even trump national tort law.

Another more efficacious path that may provide greater long term stability is for the various participants to step back from the immediate issues and instead try to determine what ends society should strive towards. How important is it for society to allow government to interfere in the private domain to make sure both existing products are safe and that future product safety technologies are diffused rapidly. Is product safety a worthy end to spend resources on and does it increase societal utility? In addition, in a global marketplace, tough product regulation may benefit corporations because people in foreign countries will know that products produced under US product safety constraints will be safe. Participants need to sit down and think about whether or not the advancement of product safety is a long-term goal and rethink whether or not the free market can advance this goal. By doing so, economists would avoid using the democratic deficit on the multilateral level to their advantage, which is not sustainable in the long run. More importantly, greater understanding of the issues and more cooperation between the groups will lead to a more efficacious product safety regime.

Keynes writes in “Economic Possibilities for Our Grandchildren” that soon the “economic problem” of subsistence will be solved and:

Meanwhile, there will be no harm in making mild preparations for our destiny, in encouraging, and experimenting in, the arts of life as well as the activities of purpose. But, chiefly, do not let us overestimate the importance of the economic problem, or sacrifice to its supposed necessities other matters of greater and more permanent significance. (Rosenbaum, 134)

It is high time for Keynes’ thoughts to be taken up and followed by more participants of the dialogue. All members of the dialogue have goods points to make and their voices should be heard. A collaborative effort would be the best way to construct a product safety regime structure that is attentive to all stakeholders, and good for both economic and societal interests.

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## **Conclusion**

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