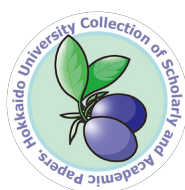




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The Right to an Unsafe Car?

Consumer Choice and Three Types of Autonomy¹

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Abstract

The Ford Pinto's fuel tank was prone to rupture in collisions above 20 mph, sometimes resulting in burn deaths. An infamous Ford memo estimated the cost of a shield correcting the problem at \$11. Should Ford have installed the shield, holding public safety paramount, or, respecting consumer autonomy, have made the shield an option?

Answering this question requires distinguishing between three kinds of autonomy: mere-choice autonomy (deciding something for oneself, regardless of the content of the choice), proclamative autonomy (making a choice that holds up a value or standard, commitment to which is partly definitive of who one is), and high-impact autonomy (making a choice that profoundly affects one's ability to make proclamative choices). (This is not a formal distinction, that is, a distinction meant to be clear, rigorous, and neutral). Autonomy is thus asymmetric: choosing to do *x* may be highly proclamative while choosing not to do *x* is not. In the Pinto case, not giving consumers the option of declining the shield undercuts only mere-choice autonomy.

Several arguments are provided (including an argument based on the nature of moral agency) that proclamative autonomy (and, derivatively, high-impact autonomy), rather than mere-choice autonomy, has significant positive value. More precisely, it is argued that, as a rule, the more proclamative a choice is, other things being equal, the more weight autonomy claims about that choice possess.

The paper concludes that common sense is correct about the Pinto case. In some instances, consumer choice may legitimately count more than the engineer's commitment to public safety (particularly when proclamative choice is involved). However, losing the opportunity to save \$11 is not too large a price to pay in order to counter market pressures against safety by inducing in engineers a professional commitment to put safety first.

Key words: Autonomy, Safety, Moral agency, Pinto

The Problem

While the Ford Pinto Case is often cited as a reminder that human life outweighs profit,² the case also highlights

two important points about autonomy³ that have wide-

ever, as noted by many, including (Schlossberger 1993), the dictum that one cannot put a price on human life is simply false.

- 1 An earlier version of this paper was presented at the Seventh International Conference on Applied Ethics: Risk, Justice, and Liberty (2012), University of Hokkaido, Sapporo. I would like to thank Michael Davis for his helpful comments.
- 2 See, for example, (Dowie 1977) and (Epstein 1980). How-

- 3 The term "autonomy" is used, rather than "liberty," because "autonomy" is the standard term employed in many fields, such as medical and nursing ethics, psychology, education, and business ethics. The distinction between mere-choice and proclamative choice has major implications for a wide range of issues in these fields, e.g., the extensive debates about respecting patient autonomy in medicine and therapy,

ranging implications. First, autonomy is often treated simply as the ability to choose, so that choosing to devote one's life to a cause and choosing strawberry over raspberry jam on one's morning toast are equally exercises of autonomy. Concomitantly, autonomy is often assumed to be symmetric, so that ethicists may speak of the importance of A's autonomously choosing whether or not to do P, without separately assessing the importance of A's choice to do P and the importance of A's choice not to do P. Both these assumptions about autonomy, this paper suggests, are incorrect.

Second, the importance placed on respecting autonomy vacillates in contemporary ethical thought. It is sometimes taken for granted that significant harms or wrongs must be borne to avoid infringing on exercises of autonomy whose importance is arguable. For example, it is generally accepted in the United States that an organ removed from a patient *post mortem* or as the result of ordinary treatment must, absent the patient's consent, be discarded rather than used to save a life (Truog 2008). Yet it is not obvious enough to render discussion otiose that autonomous control over discarded tissue or tissue from one's corpse outweighs another person's life. In particular, the nature and role of autonomy do not play a clearly consistent role in discussions of safety and consumer autonomy. The issue of consumer autonomy, as treated in this paper, focuses on weighing, on one hand, respecting the autonomy of a consumer, A, regarding the purchase and use of a product, against, on the other hand, safety risks to A (not others) posed by the use of that product. In many cases, it is assumed without question that consumer autonomy trumps protecting that consumer's safety. For example, few would insist that it is unethical to sell recreational mountain-climbing gear, despite the fact that mountain climbing is both high-risk and non-essential. Similarly, sky-diving and bungee jumping have resulted in deaths and injuries, yet manufacturers of parachutes or bungee cords are rarely excoriated by ethicists. On the other hand, engineering codes of ethics rarely give much attention to consumer autonomy. Rather, most engineering codes of ethics highlight what is often called the "paramouncy clause," maintaining that engineers must hold paramount public safety, health, and welfare.⁴ (Presumably, autonomy *per se* is not so large a constituent of welfare that speaking

of conflicts between autonomy and welfare becomes a confusion.) The implicit suggestion is that engineers should strive to reduce public risk even at the cost of reducing liberty. Similarly, governmental requirements that automobiles be equipped with seatbelts are rarely questioned nowadays, even though they curtail consumer autonomy as ordinarily understood.

This conflict between consumer autonomy and engineering's commitment to safety⁵ emerges clearly in the Ford Pinto Case, which may well be the poster-child case for the paramouncy of safety. The story of the Pinto is well known. The Pinto's fuel tank was subject to rupture and leak after rear end collisions at as low as 19.5 mph, resulting in possible burn death or serious injury.⁶ A variety of redesign options, ranging from \$1.80 to \$15.30, would have decreased the tendency of the fuel tank to rupture (West's 1994, 57 and Baura 2006). The cost of a protective shield over the tank was estimated, in an infamous internal Ford memo, at \$11 (Ford 1994).

Few would deny that Ford's lack of candor in alerting the public to the problem was culpable, or, generally, that corporations may prioritize marketing considerations over ethics. It has also seemed obvious to many that Ford was morally remiss for not instituting one or more of these safety measures. (I will focus on the \$11 shield.) Commentators rarely mention, much less recommend, the alternative that focuses on maximizing consumer autonomy: Ford could have announced the problem with the fuel tank and made the \$11 shield an available option.⁷ After all, 2 million Pintos were manufactured from 1971 through 1976, while fewer than 900 people died because of the faulty gas tank design.⁸ Even if we assume the higher number of fatalities and assume that each of the 900 deaths involved a different Pinto, the odds that a given Pinto would result in a burn death

autonomous learning in education, and respecting client autonomy in law. In addition, the term "liberty" often has a special meaning not intended here. For example, (Schlossberger 2008) defines a "liberty" as a permission worthy of public support.

- 4 See, for example, (Michelfelder & Sharon 2011) and (Kipnis 1981). Codes with paramouncy clauses include those of the ASCE, NSPE, ASME, NIEE, and AICHe. For example, The NSPE code of ethics says "Engineers shall hold paramount the safety, health, and welfare of the public." (II.1)

5 Of course, if "safe" is defined, as various writers have suggested, as "of an acceptable risk," the appropriate balance is built into the notion of safety. Thus holding public safety paramount amounts to refusing to fall below an acceptable level of risk. Notice, however, that this approach makes safety an "all or nothing" concept. Speaking of aiming for "greater safety" is as confused as calling someone "more pregnant." If, instead, "safe" is a degree term indicating the degree of acceptability of the risk, the problem of balance, of how safe is safe enough, remains. Either way, the question "acceptable to whom?" shows that the problem at issue in this paper remains.

6 In 1970, a barrier moving at 19.5 mph that struck a Pinto from the rear caused the left door to jam and gasoline to leak out (Baura 2006, 50).

7 An exception is (Friedman 1977-78).

8 The exact number of Pinto burn deaths remains controversial. (Dowie 1977) put the number of Pinto burn deaths between 500 and 900, a figure called "too high" in the Introduction to (Birsch & Fielder 1994, 10).

amount to .045 %, or less than one in 2000. Arguably, this level of risk failed to meet consumers' reasonable safety expectations (although it fell within the bounds of what the law required at that time).⁹ But people often choose to risk a remote chance of death for a small gain. A continuum stretches from the Pinto gas tank shield to expensive safety mechanisms. ABS systems (anti-lock brakes) with ESC (electronic stability control) are available as part of an optional \$750 package for the Ford Explorer and tire pressure monitors are a \$390 option for the Audi Allroad Quattro. U.S. law has mandated some safety devices, such as, since 1998, front airbags,¹⁰ though side airbags are not, as such, required.¹¹ Other potentially life-saving devices not (yet) legally required in the United States include 4-wheel drive (\$1300 for the BMW 550i), lane departure warning systems at (\$1000-\$2000)¹² and blind spot monitors (generally about \$250). Are engineers ethically required to make those choices for consumers, or should consumers be given the opportunity to make those choices for themselves?

Types of Autonomy

It seems obvious both that engineers should avoid unnecessarily dangerous projects and that consumers should have some opportunities to decide for themselves the appropriate balance between higher risk and lower cost and/or greater convenience. How should the commitment to safety be weighed against respect for autonomy? Many factors enter into the equation. For instance, risks are more acceptable when those taking the risks are also the ones reaping the benefits (Schlossberger, 1993). One factor that is generally significant but is rarely if ever bruited focuses on the type of autonomy involved. Autonomy, in other words, is not a univocal concept.

A given exercise of autonomy may be understood as having negative importance (as something others lack standing to constrain) or positive importance (as something of intrinsic value).¹³ In addition to positive

and negative autonomy, three sorts of autonomous choice can be distinguished. Mere-choice autonomy focuses on deciding something for oneself, regardless of the content of the choice. Choosing chocolate over vanilla ice cream is an example of mere-choice. Proclamative choices hold up a value or standard to which one is committed; they proclaim who one is and what one stands for. Choosing to die rather than betray one's country is a proclamative choice. Finally, high-impact choices are choices that profoundly affect the ability to make proclamative choices. Since death generally ends the ability to make proclamative choices, consenting to potentially fatal surgery is a high-impact choice. High-impact choices are generally mere-choices that possess additional instrumental value derived from their ability to enhance/facilitate or avoid hampering proclamative choices. Generally, it will be argued, respecting proclamative and high-impact autonomy carries more moral weight than respecting mere-choice autonomy and,¹⁴ as a rule, choices the exercise of which carries positive value bear more moral importance than choices the exercise of which is only of negative value.

It should be noted that the distinctions between varieties of autonomy invoked in this paper are not formal ones. A formal distinction between x and y, invoked to perform job z, must have three key features: it should be sharp, clear, and neutral. It is being employed to draw a (more or less) sharp (universal and counterexample free) line in a relatively rigorous way (in a clear and non-question begging manner that is neutral between the relevant competing conceptions). For instance, some understand Mill as suggesting that the harm principle protects self-regarding but not other-regarding interests. They regard Mill as intending this distinction to be a formal distinction, drawing the line between setbacks to interests that fall under the *aegis* of the harm principle and setbacks to interest that do not.¹⁵ The distinction is deemed to draw a sharp line in that, it is claimed, for purposes of the harm principle, all and only instances of setting back another person's self-regarding interest count as harms to others, while instances of setting back another person's other-regarding interest never count as harms to another. The distinction is deemed rigorous (clear) in the sense that determining whether an interest is self or other-regarding, it is claimed, is relatively straightforward.

9 (Birsch 1994) suggests that (despite the lack of such a legal requirement) consumers expected to survive rear-end collisions in the 21-30 mph range.

10 <http://www.dmv.org/how-to-guides/side-air-bags.php>

11 Cf <http://www.iihs.org/research/qanda/airbags.aspx>: "The government doesn't mandate side airbags specifically but does require a certain level of head and torso protection for all occupants in side impact crashes...."

12 <http://www.fmcsa.dot.gov/facts-research/systems-technology/product-guides/lane-departure.htm>

13 These are not, of course, mutually exclusive options: an exercise of autonomy could have both positive and negative importance.

14 Speaking precisely, proclamative and high-impact choices are subsets of mere-choices. However, it is often simpler, when contrasting proclamative, high-impact, and mere-choices, to use the term "mere-choice" to designate the narrower category of mere-choices that are not also proclamative or high-impact. Context generally clarifies which use of "mere-choice" is being employed.

15 The interpretation of Mill on this point is a matter of some controversy. See, for instance, (Rees 1960).

Finally, it is held that categorizing an interest as self-regarding or other-regarding, as well as protecting only the former, are reasonably neutral between different conceptions of the good. Thus, it is urged, the limits of the legitimate interest of the criminal law can be formally demarcated, that is, clearly and sharply limned in a way that is non-question-begging and neutral between competing conceptions of the good. To the extent that any of these claims fail, the distinction fails to do its job. For example, it is argued in (Schlossberger 2008) that the distinction fails to be rigorous in the required sense: what appears to be an other-regarding interest can generally be recast as a self-regarding interest. If that argument is correct, the distinction fails to do the job it is intended to do.

By contrast, the distinction between mere-choices and proclamative choices is not proffered as a formal one. I am claiming neither that the distinction is rigorous and neutral nor that proclamative choices are always more important than mere-choices. Other distinctions may play a role. There may be reasons why, in a particular case, the distinction plays a very minor role and is of little or even no importance. My claim is simply that the fact that a choice is more significantly proclamative tends, as a rule (though not without exception), to be a more powerful importance-conferring factor than the fact that a choice is largely a mere-choice. The distinction is not rigorous, though one can often enough speak, in a particular case, of a choice's being largely proclamative or largely a mere-choice with sufficient confidence to shed some light on the situation. It is not being used as a neutral line-drawing tool. The distinction is to be used as one among several helpful tools in making a defensible decision, not as a sharp criterion. I am not claiming, for example, that all and only proclamative choices deserve legal protection. I am making the less ambitious claim that, in the preponderance of cases, proclamativity is a weight-enhancing feature of choices. As a rule, the more proclamative a choice is, other things being equal, the more weight autonomy claims about that choice possess. Thus lack of rigor in the indicated ways need not pose an undue problem, provided they are not generally so severe as to make common-sense judgments about proclamativity impossible in the majority of cases when such judgments would be helpful. A tool need not be able to perform every job. In cases where the degree of proclamativity (or the relevance of proclamativity) is problematic, moral evaluators must turn to other tools.

It is, therefore, not unduly problematic that what counts as a proclamative choice is to some extent a matter of degree. Most of our choices have at least some proclamative import, even if minor or trivial. While it is often convenient to speak of a choice as a proclamative choice or as a mere-choice, it may be more accurate and precise to speak of the degree to which a

choice is proclamative. The extent to which a choice is proclamative depends significantly upon both the circumstances and the individual. Put more precisely, two choices both falling under a general description of a choice-type may differ significantly in degree of proclamativity. In addition, incomplete descriptions of a particular choice may lack sufficient information to indicate the degree of proclamativity of the choice. How proclamative is proclamative? For choices made by an individual, two elements play a role in assessing the degree of proclamativity: the centrality of and strength of the commitment to the value or ideal being proclaimed and the extent to which the choice serves to proclaim that ideal or value.¹⁶

In some cases, context may become a critical factor in determining a choice's degree of proclamativity. Choosing to wear a yellow star on one's sleeve is, in most times and places, an expression of fashion whimsy and so, typically, a mere-choice. However, in a widely circulated apocryphal story, in 1940 the occupying Nazis ordered Danish Jews to wear an identifying yellow star. King Christian X, the legend goes, donned the yellow star himself, followed by all of Denmark.¹⁷ In that context, the wearing of a yellow star would generally be a proclamative choice of deep moral significance.

Moreover, individuals may have eccentric beliefs and values, turning what would ordinarily be mere-choices into proclamations of their values. Generally, rather than investigating the subjective meaning of a choice for each particular person involved, an objective/reasonable person standard must be employed. The reasonable person standard is, in some ways, a legal fiction, like the driving age. The rationale behind a driving age is that one should not drive until one is sufficiently mature. It is not feasible, however, to investigate prospective license holders for their level of maturity. Such an investigation would be unduly intrusive. Moreover, we lack accurate and widely accepted objective measures of maturity level. So the law employs the legal fiction that people suddenly become sufficiently mature on their 17th (or 18th, or 16th, depending on the jurisdiction) birthday. That fiction imperfectly but sufficiently well divides drivers into the categories of those who are sufficiently and those who are insufficiently mature. The legal fiction's combination of ease of applicability, freedom from objectionable discrimination, and reliability of

16 In the case of societal choices, two additional factors emerge: the number or percentage of individuals as well as the effects of encouraging/permitting/obstructing that manner of proclaiming those values or ideals. Some of those effects may, in turn, affect the factors mentioned earlier, creating a feedback loop.

17 See, for instance, (Guttenplan 2002, 11) and (Gutman 1995, 142).

tracking are, overall, acceptable. More reliable methods do poorly on one or more of these grounds, so that the amount of gain in reliability is not worth, for example, the amount of loss of ease of applicability. Similar considerations apply to using the reasonable person standard. In general, thus, it is acceptable to use the reasonable person standard, although, when feasible, it is preferable to create some wiggle room for eccentric or less than ideally rational beliefs. In some cases, the degree of accommodation necessary to accommodate a subjective standard might be light while the loss of respect for proclamative choices some individuals would actually make, were they accommodated, is great, considering the number of individuals involved, the strength of their commitment, and the public proclamative force of the choice in its circumstances. In such cases, a subjective standard may be more appropriate.¹⁸

In general, then, reasonable limits apply: unreasonable proclamations, proclamations that adversely affect legitimate state interests, and proclamations that are not reasonably feasible to respect may be easily overridden, though they may still carry some weight. In most cases, especially when formulating a general policy, it is reasonable to make moral decisions on the basis of an objective (normal, reasonable person) determination of the proclamativity of a choice, without having to inquire about the exact subjective proclamative weight a choice bears for each person affected.

Proclamative and high-impact choices are often asymmetric. Generally, forcing someone to wear a religious icon significantly violates freedom of proclamative choice while forbidding the wearing of that icon frequently does not. The asymmetry is due not to some difference between acts and omissions or between negative and positive freedoms, but to a difference of proclamative import: wearing the icon normally makes a strong proclamation while not wearing it normally does not. (While there are significant exceptions, in most circumstances, the absence of the icon is neutral or silent, consistent with almost the entire range of relevant views.)¹⁹ Similarly, not wearing seatbelts

significantly increases the risk of death or serious injury. Wearing seatbelts may result in minor discomfort or inconvenience²⁰ but does not, generally, significantly impair the ability to make proclamative choices. Thus, hampering the choice to wear seatbelts restricts a high-impact choice but requiring the use of seat belts generally does not.²¹ It is, thus, a common mistake to evaluate the importance of autonomously deciding whether or not to *x*, since deciding to *x* may have more proclamative import or greater impact on proclamative choice than deciding not to *x*, or vice versa.²²

The Greater Importance of Proclamative Choice

These distinctions are relevant because making a bad safety decision is not, generally, a proclamative choice.²³

explicitly anti-Semitic law forbidding the wearing of Jewish symbols or images. The proclamative import of not wearing religious images in the former case amounts to acknowledging the importance that the school places on learning math and so forth, which is hardly controversial. The proclamative import of not wearing religious icons in the latter case constitutes implicit acceptance of anti-Semitism and/or bowing to persecution.

18 For example, it is appropriate for a university, only a handful of whose students are vegans, to provide a vegan dining alternative, despite the fact that the vast majority of students attending view eating tofu instead of steak as a mere-choice. The facts that vegan arguments have some merit and that providing a vegan option is usually not unduly difficult are both relevant.

19 A school rule, imposed during a period of intense religious conflict, that forbids wearing any religious symbols or images during school hours, which is explicitly meant to cool down religious strife and facilitate focusing on academic subjects during school hours by creating a strife-free zone, has much less impact on proclamative choice than does an

20 Even were someone to argue that the cumulative disutility of millions of drivers buckling and unbuckling seatbelts over the course of their driving lives is large, the impact on any given driver's ability to make proclamative choices remains small.

21 Note that in the religious icon case the asymmetry favors the omission over the act, while in the seat belt case the asymmetry favors the act over the omission. Again, requiring students to wear a neutral school uniform is less of an incursion into proclamative autonomy than requiring students to wear a Romney blazer, though both require positive actions.

22 Of course, when this is not the case, one may speak simply of the importance of the decision. Normally, one may simply ask how much A's autonomy is infringed when he is prevented from choosing whether to paint his kitchen white or beige, as there is no asymmetry between these options in proclamative content or proclamative import.

23 One might further argue that it is a value choice to prefer seeing a movie with those 11 dollars instead of eliminating a remote chance of death. However, such a choice would not generally be a proclamative choice as defined below. Nonetheless, there might be a given individual who has devoted his life to risk-taking, and so regards spending any money at all on safety as violating the value to which he has devoted his (presumably very short) life. But that is a highly eccentric view of an \$11 safety device. A reasonable person would not normally view buying a car with that device as making a proclamative choice about the supreme value of risk-taking, and, as noted earlier, an objective rather than subjective standard of proclamativity seems appropriate

In contrast, while preventing customers from obtaining the \$11 fix has significant impact on proclamative choice, since death or serious injury may result, forcing consumers to pay \$11 for the safety fix generally has a negligible impact on future proclamative choices. (For the vast majority of Pinto purchasers, \$11 does not dramatically affect their circumstances.) Moreover, simply failing to produce a car lacking the fuel tank shield does not seem like an undue constraint on consumers' negative autonomy. If I make and sell red shirts, I violate no one's rights because I don't also make blue shirts. Thus, autonomy mounts a serious challenge to safety in this case only if the exercise of mere-choice is of fundamental importance and positive value.

Several arguments suggest that it is proclamative choice, not mere-choice, that is of great moral importance and carries significant positive value.²⁴ Autonomy as mere choice is of some value, but hardly pre-eminent value. For example, U.S. regulations concerning the water content of imported meat have prevented residents from enjoying some traditional versions of foreign foods, such as Munich Weiss Wurst, with an average water content of 59% (FDDDB 2012). Ordinarily, within reasonable limits, individuals have the right to decide what clothing to wear. However it is generally accepted that school dress codes may override autonomy of clothing choice, a mere-choice, even though no one will suffer grievous harm if a teenager wears a swimsuit to biology class, much less torn jeans or a dress slightly shorter than the student's extended fingertips, and wearing caps in certain fashions poses no harm itself (though it was a symbol of adherence to group practices that did cause harm). Important choices matter more, but importance here must not be subjectively defined. As noted above, some people have eccentric priorities. I am not immune from school dress codes because wearing a bathing suit to algebra matters more to me than life itself. Yet eccentric priorities and common priorities are equally chosen and may be of equal importance to the chooser. What makes one large class of choices carry more weight is the normative importance of those choices, judged by some reasonable standard (not just the normative importance the agent in question accords them). One reason that choice of a spouse matters more than choice of an appetizer is that a person's marriage (and how that person conducts it) is intimately involved in so many of his or her proclamative stances and choices. My choice of spouse, stance toward marriage, and how I relate to

my spouse forms an important part of who I am. My spouse and how we relate are very much involved in the kind of parent I am, my relation to my children, and much else in my life that proclaims my values and who I am as a person. To take away the right to choose one's own spouse and revert to forced arranged marriages is thus profoundly to undercut the proclamative dimension of a life. Normally, no such argument can be mounted about restricting the ability to order chocolate sauce. The importance, thus, of our pure choices is in large measure determined by their proclamative import. We are thus forced to acknowledge that proclamative choices, choices that by some reasonable standard take an important moral stand, generally carry much more weight than mere-choices.

In addition, a proclamative choice, whatever else it does, serves to uphold publicly a standard as proper and worthy of commitment, as a banner of what one stands for. "This stance," a proclamative choice announces, "I am willing to fight for and be judged by." It is thus self-defining in a special respect that is of central importance to anyone who regards himself or herself as a moral agent. This is particularly true if, as (Schlossberger 1992) argues, to be a moral agent (a moral person), in this sense, is to be a worldview in operation. Hence, not respecting a deeply proclamative moral choice means forcing a person to be a moral hypocrite. That is, instead of proclaiming one's deepest commitments, which characterize who one is as a moral being and what one stands for, one is forced either to keep silent or, worse, to proclaim that to which one is opposed. So there is a special importance in respecting proclamative moral autonomy. The most fundamental sort of personal integrity is at stake.

For these reasons it seems plausible to claim that proclamative choice has significant positive value, that is, that the exercise itself of proclamative choice has intrinsic value. By contrast, a negative conception of autonomy protects autonomy not because of the intrinsic value of choice but because others lack standing to interfere. You are not entitled to force me to choose chocolate ice cream over vanilla, on a negative conception of autonomy, because it is not your business, rather than because my choosing vanilla is itself of great value.

Does mere-choice have, like, the exercise of the right to vote, significant positive value? The question is relevant because, if mere-choice has great positive value, then not offering Ford customers the choice of saving \$11 and taking the extra risk is akin to making it harder for eligible citizens to vote. If autonomous choice is an important intrinsic good, we should not unnecessarily put up roadblocks to its exercise, and so there is a significant (though potentially overrideable) reason to opt for making the gas tank fix an available option. At the very

here. Normally, thus, not having the option of refusing to pay \$11 for a gas tank cover is not considered to have a significant impact on proclamative choice.

24 To the extent that pure choice has some value, so does proclamative choice, since a proclamative choice is, after all, a choice.

least, the issue is cloudy.

Does mere-choice have great positive value—does choosing itself, regardless of what is chosen, have considerable intrinsic value? Clearly, the exercise of mere-choice autonomy is generally of some value. The exercise of mere-choice can be of instrumental value. It is generally of some psychological value to the person who has it, and constraints on the exercise of mere-choice are usually experienced as disvalues. In some instances, the disvalue involved comes from a perceived violation of negative value: I may perceive your ordering me (backed by sanctions) not to eat stale bread as an assumption of power over me to which you are not entitled and/or as contempt for my status as an equal being, even though, before you issued your order, I had no desire to eat and no intention of eating stale bread (Schlossberger 2001). However, according mere-choice as much intrinsic value as proclamative choice amounts to viewing human beings as essentially preferencers and human life as about satisfying whatever preferences we happen to have. From a moral perspective, we are not qualitatively different from other preferencers, such as fruit flies. It is not clear, on this view, why human choice should be sufficiently important ever to trump utility.

An argument driving this point home is articulated in (Schlossberger 1992) and (Schlossberger 2008).²⁵ Assume we discover an organism with free will, Willy the Willer, whose choice repertoire consists entirely of pressing or not pressing a red button at any given moment. The button is not connected to anything and Willy has no strong moral or proclamative beliefs about the button pressing (e.g., he does not believe that pressing the button every 30 seconds is a moral good). His choice at any moment to press or not press the button, however, is fully autonomous, in the same way that, under normal circumstances, we can autonomously choose to wave with the right hand or wave with the left hand. Now, granted, there is some value in not frustrating the Willer's choice. Other things being equal, there may even be some slight positive value in Willy's exercising his choice. But, suppose that there is some urgent reason for us briefly to appropriate Willy's button and that we can do so in a manner that poses no risk to Willy and causes Willy neither pain nor frustration, nor any other negative affect (e.g., briefly hypnotizing Willy so he remains unaware of our brief appropriation of his button). Does morality forbid us from briefly appropriating Willy's button? Do we wrong Willy if we do so? Divorced of any proclamative content and divorced of either frustration or risk of harm, how much moral importance does Willy's autonomous choice to

push the button carry? By contrast, it is at least *prima facie* objectionable to deprive a competent adult in even this trivial way so as to gain some advantage for oneself. We can readily imagine, in other words, an act that would *prima facie* count as improper interference with Socrates but would not count as improper when done to Willy. This disparity results not from the fact that Socrates belongs to our species and Willy does not, but from the fact that Socrates, unlike Willy, has standards he wishes the world to meet. Socrates' actions, perceptions, beliefs, and propensities make full sense only in the context of his commitment to values and attitudes. Willy's do not. Socrates, in other words, makes proclamative choices. Willy makes only mere-choices.

This difference between Socrates and Willy is crucial because proclamative choice brings together the idea of a moral outlook, without which reality lacks a moral dimension altogether, and agency, expressing that moral outlook through activities and commitments (realizing that outlook in a life). Numerous arguments for this conception of moral agency can be found in (Schlossberger 1992).²⁶ The root idea is that, without proclamative choice, we would either still be able to judge, hope, prefer, wish, and evaluate, perhaps, but we would be passive onlookers, or, though we would be able to reflect our choices in our activities, our choices would be at best mere preferences. So proclamative choice is grounded in a conception of human beings as imparters of meaning and standards.²⁷ Human life, on this view, is about commitment to a framework of what is intrinsically worthwhile. Electron states and other quantum phenomena are, as such, morally indifferent. But, by living a life, human beings proclaim (through their choices, words, etc.) a set of standards and meanings that transform the world in which they live from a world of random events to a world of significance. The death of Caesar becomes not just a bit of steel moving so many inches but an act of betrayal and/or patriotism. Being a moral agent, in other words, amounts to giving meaning and value to a world of random quantum fluctuations by proclaiming commitment to a meaningful network of standards through the life one lives, that is, through one's choices, thoughts, perceptions, actions, relationships, feelings, etc.²⁸ "So the moral outlooks [expressed in

25 Willy, in those volumes, is referred to as "The Wanter." Both volumes contain additional arguments against the overriding importance of autonomy as pure choice.

26 The link between this account of agency and moral responsibility is of particular importance in answering certain objections raised by (Levy 2005) against some publications written after (Schlossberger 1992), such as (Scanlon 1998), (Smith 2007), and (Smith 2008), that also advocate what has come to be known as "attributionism."

27 Of course, intelligent aliens with fully developed worldviews could also be full moral agents in this sense. Small children and animals count as partial persons, by virtue of possessing a rudimentary worldview. Cf. (Schlossberger 1992).

28 The status and nature of that network of standards, that is,

proclamative choices] that constitute moral personhood are not only valuable, but the very source of value” (Schlossberger 1992, 72). Thus proclamative choice is at the heart of what gives morality purchase. In short, (worldviews expressed in) proclamative choices are both what makes the world morally meaningful and the fundament of moral agency. Moreover, proclamative choice is not just essential to but a primary constituent of morality and agency. So it seems at least difficult to see how it could plausibly be maintained that, while morality and agency are valuable, proclamative choice is not valuable. Absent some unusual but compelling contrary analysis, to the extent that morality and the existence of human moral agency have some intrinsic value, proclamative choice has some intrinsic value.²⁹

Conclusion

Common sense appears to be correct about the Pinto case. In some cases proclamative choice and high-impact choice may temper or override engineering’s paramountcy clause. Mere-choice autonomy, the type of autonomy conflicting with the paramountcy of safety in the Pinto case, may have some instrumental value and some limited intrinsic value, but lacks much intrinsic value. Utility favors going ahead with the fix. Whatever minor distress I might feel about not being given the choice of saving \$11 and taking the risk is outweighed by hundreds of burn deaths.³⁰ In addition, there is an important rhetorical dimension to the paramountcy clause. Given the pressures on business enterprises generally to cut corners and engage in devious or irresponsible conduct, to the detriment of public safety, there is much to be said for having engineers as a group and engineering as an institution be special advocates for public safety. Much corporate behavior is a response to a competitive environment of manipulation and half-truths encapsulated in immensely expensive, tightly focused messages that need to cut across incessant advertising chatter to millions of sensorily overloaded, reasonably lazy consumers with short attention spans. Ford can hardly be expected to spend vast sums diluting the focus of their message by explaining in detail the information that consumers need to make reasonable decisions about paying extra for a fuel-tank fix, particularly since, in

the American corporate milieu, rival advertising can be manipulative or misleading. In such an environment, where truly autonomous choice is hard to come by, losing the opportunity to save \$11 by taking a remote but serious risk does not seem too large a price to pay in order to counter these market pressures by inducing in engineers a professional commitment to put safety first.

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whether it is objectively valid, arbitrarily chosen, universal, best understood as a set of truths or as a set of sentiments, and so forth, is a further and separate issue.

²⁹ That is, it is generally a good-making quality *per se*.

³⁰ The invisible hand argument is not very convincing here: other than blind religious faith in the sanctity of free markets, there appears to be little reason to think that society generally or even individual consumers are better served by making the protective shields an option.

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