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FOREWORD

The common thread in this symposium is the somewhat imponderable question, "How much safety is enough?" This question arises on many levels but takes its most explicit form in the process of legislating on safety matters and in administrative regulation of safety-related private activities. The question is more regularly encountered, however, by individuals and business firms in deciding such things as whether to take up skydiving, to ignore a speed limit, or to install safety-promoting equipment. Here the law and legal institutions, becoming increasingly involved as the possible social effects of these decisions intensify, affect perceptions of the consequences of safety-related decisions and to this extent control them. It has appeared to the editors that a symposium treating safety as an objective of public policy might improve understanding of how government and law do and should involve themselves in promoting this aspect of the common good.

The question posed about the appropriate quantum of safety underscores the relativity of safety as a value. While everyone recognizes that risks of injury and death are taken daily in pursuit of other things we desire, there is a lingering absoluteness attached to safety in public discussions of it in the press and the political arena. Thus, Mr. Ralph Nader's propagandizing on behalf of safety in auto construction and other fields largely relies on the obvious political consensus in favor of safety to the exclusion of economic facts.¹ On the other hand, reduction of the problem to purely economic terms in a cost-benefit equation does not sit well either. When human life is put in one scale, the cost-benefit balance becomes a metaphysical one and the valuation process one of vast ethical implications. Nevertheless, some judgment on life values is implicit in every safety decision, and one must ponder the desirability of making the judgment explicit as a means of improving the quality of decision making.² Unfortunately, efforts to obtain an ethicist's reactions

¹ See, e.g., R. NADER, UNSAFE AT ANY SPEED (1965). Compare Friedman, *Auto-Safety Standards*, NEWSWEEK, June 5, 1967, at 80.

² See J. FLETCHER, SITUATION ETHICS 118 (1966):

"It is possible that by learning how to assign numerical values to the factors at stake in problems of conscience, love's calculations can gain accuracy The temper of situation ethics is in keeping with the attempt to quantify qualities

". . . By reducing the speed limit on our highways to fifteen miles an hour we could save more than four fifths of the lives that are lost in accidents. We don't do it, though. Why?

"It is sentimental, simplistic, and romantically backward to 'feel' that love cannot or ought not calculate; that it is either demeaned or diluted by having a memory, making future references, counting people, trying to figure the angles, finding its mix of alternatives and trying to win the game of optimum choice."

Even with this enlightened attitude, the valuing of human life will be troublesome, especially where distinctions must be made among such groups as the elderly, children, the well-to-do, the poor, and so forth.

to these troubling matters were unavailing. The subject nevertheless emerges in various forms in those articles focusing on government's regulatory efforts; in these articles, too, the reader may appraise the quality of certain government safety decisions and the soundness of the methods employed to reach them.

One way out of the moral dilemma posed by any explicit quantification of safety lies in greater reliance on impersonal market forces as a decision-making mechanism. Obviously, the law must supplement market forces to bring home to individuals and firms the full consequences, including the social costs, of their safety-related activities. In so doing, liability laws and other legal sanctions should improve the chances for appropriate determinations of the extent to which safety may be jeopardized in particular circumstances and may encourage socially profitable private investment in improved safety. Recent re-evaluation of the fault liability and liability insurance system, particularly as it operates with respect to traffic accidents, has called attention to the system's many shortcomings, among them its apparent ineffectiveness in generating the optimal amount of safety. Since the laws which allocate accident costs and otherwise influence safety-related behavior were not structured with this goal explicitly in mind, their review from this standpoint should contribute wisdom to their modification. This and other aspects of the monumental problem of traffic safety are treated extensively herein.

The symposium makes no effort, of course, to canvass all of the areas in which safety is an issue; such substantive fields of law as products liability and workmen's compensation are among the more obvious omissions. Perhaps a more unfortunate gap is the omission of an article on the making of safety decisions by intra-industry standards-setting groups. Such industry self-regulatory measures are often undertaken to ward off regulation by government and are commonly hailed as the preferable alternative. Although an article was scheduled in this previously little-noticed area, the intended author found his subject pre-empted by an article recently appearing elsewhere.³ In addition to this interesting piece, which we might attempt to incorporate in the symposium by reference, one other recent article would have fitted appropriately in these pages, this one presenting some surprising conclusions from a comparative study of construction safety with and without state safety regulation.⁴ Even without comprehensiveness, however, the symposium should contribute to more sophisticated use of legal, economic, and analytical means for giving the proper weight to safety in both public and private decision making.

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³Wachtel, *Products Standards and Certification Programs*, 13 ANTITRUST BULL. 1 (1968). While stressing the antitrust issues in industry collaboration, Wachtel provides useful insights on standards-setting procedures, the role of sponsoring agencies, and effectiveness.

⁴Sands, *How Effective is Safety Legislation?*, 10 J. LAW & ECON. 165 (1968), concluding that government's efforts are better directed to research and education than to regulation and enforcement.