

Philosophical and Ethical Issue; in the Passive Restraint Debate

Philosophical and Ethical Issues in the Passive Restraint Debate

Historically, the principal argument against Federal Motor Vehicle Safety Standard 208 has had a common two-pronged antiregulation structure: 1) mandating passive restraints represents one more example of governmental intrusion into individuals' rights to make their own decisions and run their own lives; it is a flagrant example of paternalism; and 2) mandatory passive restraints will increase the cost of car ownership, * unnecessarily raising expenses for people who currently use their manual belts and people who prefer not to be restrained (many of whom might disconnect automatic belts).

The "individual freedom" argument is not without merit, nor is it without very close precedent. The debate over delay or rescission of the passive restraint rule echoed the debate which has been repeated in recent years in one State capitol to the next as a majority of States have repealed their motorcycle helmet laws (51). Nevertheless, several factors mitigate the force of the freedom theme. These include economic and equity considerations, public opinion, and precedent.

Regarding the last of these, there are numerous precedents for Government's mandating auto safety features. Some involve driving behavior, such as speed limits and drunk-driving laws; and many, like the passive restraint rule, involve physical attributes of cars themselves—to name a few, shatterproof glass, energy-absorbing steering-wheel columns, padded dashboards, and today's manual lap/shoulder belts. Precedent does not make the next related case—i.e., passive restraints—necessarily "right," but it does serve as a supporting argument.

Public opinion is another consideration—in a democracy, ultimately perhaps the most important one. While survey results concerning passive

*As was noted in the preceding chapter, if insurance rates for passive-restraint-equipped cars fall, the net cost of owning a car with an automatic belt might decrease, even though the *showroom* sticker price would rise.

restraints have varied, it is decidedly not the case that the public opposes passive restraints. For example, a 1977 Gallup poll found that of the 83 percent of respondents who had an opinion, a majority favored installation of air bags on all cars. This theoretical support for air bags does not disappear when respondents are reminded that they will have to pay extra to have this extra protection (13). * The will of the majority should not invariably dominate the rights of the minority, but in this case, given the limited input of public opinion into the decision, at least there is no question of the tyranny of the majority.

Conceptually, the most compelling responses to the "individual freedom" view have a theoretical base grounded in economic theory. Perhaps the most important of these are the negative externalities associated with the absence of adequate occupant restraint. Loosely, negative externalities are negative consequences visited upon one or more persons as a result of some other person's independent decisions or actions. In the occupant restraint case, negative externalities are of two types: economic and noneconomic.

Concerning the former, the nature of automobile and health insurance is such that the insured costs of automobile accidents are spread over large numbers of car and health insurance policyholders (and taxpayers in the instance of public health insurance). Thus, if an unrestrained victim of an automobile accident experiences greater injury—and hence higher medical bills than would have been the case had he or she been restrained, others share in the economic liability created by the medical treatment. In effect, one person's independent decision not to wear a seatbelt has ad-

● Once again, the question is whether (or how much of) such survey support would translate into market decisions. The automobile manufacturers seem convinced that in practice consumers will not be willing to pay the high cost air bags would entail(23). It should be noted, however, that the industry's limited experience in this regard involves a radically different set of circumstances than would obtain in a world of mandated air bags.

verse consequences for other people's pocket-books. Pecuniary negative externalities such as this constitute a technical market failure and serve as a theoretical rationale for governmental intervention. *

The noneconomic negative externalities concern the health risks imposed on people other than the initial car buyer, and refer specifically to air bags, not passive belts. If the initial buyer purchases a car equipped with an air bag, all future frontseat occupants-passengers, children, second and third owners-will receive that protection. If the initial buyer does not purchase an air-bag-equipped vehicle, future passengers will be subjected to greater risk. This argument depends further on some specific economic conditions, which will be returned to, but it is sobering to note the following statistics from a study of 137 crashes (with 172 people injured) in Baltimore County, Md. (4):

- approximately half of the people injured were occupants of vehicles no longer owned by their original purchasers;
- nearly 60 percent did not own the vehicles in which they were injured;
- three-quarters of the passengers were not related to the vehicle owners; and
- almost two-thirds of the victims were under the age of 30, and only one-third of 16- to 29-year-olds injured owned the vehicles in which they were injured.

In effect, these data challenge, or at least question, the argument that new-car purchasers should be free to determine whether to invest in safety devices like air bags since it is their own protection that is in question. The health and safety of many others are also involved. In a well-functioning market, one might find this potential externality acceptable. After all, people can and should choose not to ride in cars in which they do not feel adequately protected. And, more to the point, future owners of used cars can have desired safe-

● Some of these pecuniary externalities could be overcome through the market. For example, insurers could charge lower (actuarially fair) personal injury protection (PIP) and medical (Medpay) premiums for owners of passive-restraint-equipped vehicles, as a couple of insurers are currently doing. However, other pecuniary negative externalities could not be addressed by the market. Consider, for example, the accident-related medical costs of Medicare and Medicaid beneficiaries.

ty equipment added when they purchase their cars. But can they, in the case of air bags?

There may be firms that will retrofit a car to have air bag protection, but the cost is quite high because of the small scale of the business and the sizable economies of scale that pertain to air bag manufacture and installation. Thus, the prospective buyer of an air bag system is penalized economically by the small scale of active demand for air bags. Alternatively, all of those people who would want to purchase air bags at mass-produced prices would benefit from a requirement (or industry decision) to install bags in much of the new-car fleet. *

Clearly, there is one obvious group of potential economic victims of a passive restraint law: current regular users of manual lap/shoulder belts. They are already receiving all of the protection that would be afforded them under a mandatory passive restraint rule, yet under such a rule they would have to pay more for their new cars. In effect, they would be penalized for other drivers' poor judgment. If Nordhaus' (33) assessment is correct, the net cost of automobile ownership would drop under a passive restraint rule, benefiting current belt users as well as nonusers. But one might argue that current users should *already* be receiving an insurance break, something insurers do not offer—in large part presumably because of the problem of verification of belt use (see ch. 3).

Thus, the "individual freedom" argument has pluses and minuses. Certainly there is a public interest in passive restraints which competes with the private interest in free individual choice; this is not clearly a case of unwarranted governmental intrusion, pure and simple. Which of the interests one rates as dominant probably reflects one's basic political philosophy as much as the inherent merits of the case.** In this regard, it is

● A ready response to this problem is that people can use the already required lap/shoulder belts and receive nearly the same amount of protection. However, the above argument applies to the apparently sizable segment of the population that chooses not to wear belts, perhaps for reasons of discomfort, but would like to purchase air-bag protection at a reasonable cost, though not at current small-scale high market prices.

● *For a recent debate on this theme, see Perkins (36) and Baker and Teret (5).

interesting to read the assessment of George Will (52), noted conservative political analyst, commenting on the view “that Government has no business requiring drivers to buy and use inexpensive devices that might save them from self-destruction:”

There is a pitiless abstractness, and disrespect for life, **in such dogmatic respect for the right of**

consenting adults to behave in ways disastrous to themselves. Besides, too many children passengers are sacrificed on that altar. And a large part of the bill for the irrationality of individual drivers is paid by society.