The Ethics of Consumer Production and Marketing

Risk from using consumer products (1992):

- 585,000 injuries requiring hospital treatment from toys, nursery and playground equipment
- 322,000 people mangled using home workshop equipment
- 2,055,000 people needed emergency treatment for injuries involving home furnishings
- 3,467,000 treated for injuries involving home construction materials
- 44,200 car accidents per week, causing 120 deaths each day
- Financial losses of $479 million per day
- Each year, 20 million serious accidental injuries, and about 100,000 are killed
- Total cost of injuries (for 1995): $435 billion

Further harm to society from deceptive selling, shoddy products, and warranties not honoured

6.1 Markets and Consumer Protection

Markets and consumer protection (*Laissez-faire (LFV)*):

Some argue that free markets *automatically* protect consumers from bad products and injuries; so government and business don't need to get involved

On this view, consumers decide by their spending choices whether they *want* increased safety

If consumers don't want extra safety, it would be wrong of governments or business to impose safety restrictions, since this distorts markets, and so is inefficient (***anti-utilitarian***)

Further, imposing safety restrictions doesn't respect people's right to free choice, and so is ***unjust***.

The overly safe appliance example: If people are forced to pay for safety they don't value, their freedom to choose is unjustly taken from them and their resources are wasted on something with little personal utility

Criticism of LFV's empirical assumptions:

The market approach only works when:

(a) there are numerous buyers and sellers,

(b) everyone can freely enter and exit the market,

(c) everyone has full & perfect information,

(d) all goods in the market are exactly similar,

(e) there are no external costs,

(f) all buyers & sellers are rational utility maximizers,

(g) the market is unregulated. (263)

Laissez-faire argument

1. Consumers have the necessary information, buying choices and are able rationally to decide how much safety, etc. is valuable to them.
2. If consumers have the necessary information, buying choices and are able rationally to decide how much safety, etc. is valuable to them, it would be wrong for government/business organizations to regulate safety.
3. It would be wrong for government/business organizations to regulate safety.

against (c) (everyone has full & perfect information): Though in theory it's possible for consumer organizations to fill this need, because their information is easily copied for free, such organizations find it difficult to get the resources or provide the necessary information

against (f)(all buyers & sellers are rational utility maximizers)**:** Almost all consumer choices are based on probability estimating, and studies show that most of us are horrible at this (p264)

We underestimate, e.g., the dangers of driving, smoking or eating fried food, but overestimate the danger of tornadoes or attacks by grizzly bears

People are also inconsistent in linking probability with their preferences:

(i) Sometimes people will rank one choice as being both better and worse than another

(ii) People often say they will pay more for things they prefer less

(iii) Most people will say they prefer one payoff to another in one context, but switch in other situations where the payoff is mathematically the same

http://en.wikipedia.org/wiki/Representativeness_heuristic

http://en.wikipedia.org/wiki/Availability_heuristic

http://en.wikipedia.org/wiki/List_of_cognitive_biases

Against (a) (there are numerous buyers and sellers)**:** Many even most consumer markets are monopolies or oligopolies

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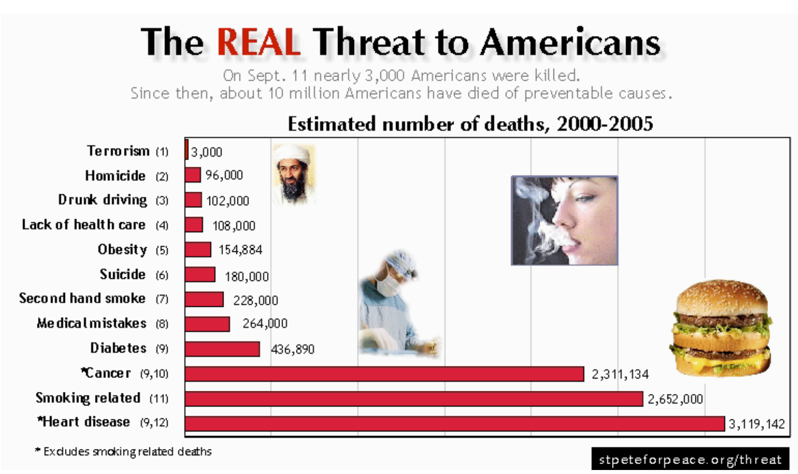

BackHYPERLINK

On balance: market forces can't deal with consumer needs for safety and value; so, "consumers must be protected through the legal structures of government and through the voluntary initiatives of responsible business people." (265)

Three manufacturer's duties to consumers: (listed in increasing business and decreasing consumer responsibility):

- ⋆Contract View
- ⋆Due Care View
- ⋆Social Costs View

The Contract View: The consumer knowingly enters a sales contract to buy something the firm knowingly supplies, as having certain traits

The consumer has the right to the specified product, after paying, and the business then has the duty to provide it

Kantian subsumption: Failure to keep a contract (a) can't be universalized, and (b) uses others as mere means.

Rawlsian defence: Recognizing contracts expands liberty by assuring us that contracts will be kept; so we also get greater benefits

Traditional contract morality (secondary) constraints:

(a) both sides have full knowledge of the terms of the contract;
(b) there can't be any intentional deception about nature of contract;
(c) there can be no duress or undue influence

These further restrictions can be justified by Kant and Rawls, since they involve respecting consumers as free and equal persons

The contractual theory of business's duties to consumers has **four moral duties**:

(1) the ***basic duty*** to comply with the terms of the sales contract; plus

the ***secondary duties*** to

(2) disclose the nature of the product

(3) avoid misrepresenting the contract

(4) avoid duress and undue influence

(1) The Duty to Comply: e.g., if a drug company (Winthrop) says a painkiller is nonaddictive, it must be nonaddictive

The claims (explicit or tacit) about product quality have four elements:

(i) Reliability: Since the reliability of complex products is always (much) less than that of their least reliable component, Consumers should be given this overall reliability figure, and the manufacturer should make sure that its overall reliability meets its claimed dependability.[1]

(ii) **Service life** (wear and tear, obsolescence, say, because of technical or style changes)

(iii) **Maintainability**: How easy it is to keep a product working or get it fixed

1. Exactly equal to the (perhaps conditional) probability of the reliability of each part multiplied together. E.g., suppose a widget has three parts, A, B, and C. Further suppose that part A's reliability = .9, B's = .8, and C's = .7. For simplicity, suppose that the reliability of each part is independent of the others. Then the reliability of the whole widget = (.9)(.8)(.7) = .50 or 50%.

(iv) **Product safety:** Should involve only those reasonable, preventable risks explicitly made known to buyer)

"'preventable risk is not reasonable (a) when consumers do not know that it exists; or (b) when, though aware of it, consumers are unable to estimate its frequency and severity; or (c) when consumers do not know how to cope with it, and hence are likely to incur harm unnecessarily; or (d) when risk is unnecessary in that it could be reduced or eliminated at a cost in money or in the performance of the product that consumers would willingly incur if they knew the facts and were given the choice'" (268)

Summary: The seller has a duty to provide a product with a level of risk no higher than they have expressly or implicitly represented to the customer, which the customer has freely and knowingly agreed to assume

(2) The Duty of Disclosure: The seller has a duty to make plain exactly what the customer is buying and under what conditions

This means sellers have a duty to tell the customer facts about the product that could reasonably affect the purchase, such as its components, performance, costs of operation, etc.

Freedom in contracts implies knowledge about the product

Some have argued that product knowledge is costly to create, and consumers should pay extra for it

Evaluate

(3) The Duty Not to Misrepresent: misrepresentation makes freedom of choice impossible

"A seller misrepresents a commodity when he or she represents it in a way deliberately intended to deceive the buyer into thinking something about the product that the seller knows is false" (345)

e.g. showing a used model mixed in with new ones; not informing about software bugs, using names that link a product to a better one; advertising lower prices as a lure to get customers to buy more expensive ones ("bait and switch"); using paid testimonials.

(4) The Duty Not to Coerce: A seller should not take advantage of a buyer's fear or emotional distress, guilt (e.g. at a funeral parlour), gullibility, immaturity, ignorance, etc., to make them act irrationally

Problems raised for Contractual Theory: The assumptions of the theory are false

Objection 1: Manufacturers and customers aren't directly connected (retailers & wholesalers middlemen), and so do not really enter into a contract

Reply to 1: Manufacturers enter into indirect contracts with consumers, via advertising campaigns; dealers are largely "conduits" between manufacturers and customers

Objection 2: On contract theory, if consumers accept disclaimers, such as "as is, "with all faults," or if the consumer has examined or refused to examine the goods, all contractual duties of the manufacturer, become nullified; but the duties are still real

Objection 3: Laissez-faire ideology (which led to the development of the contract view) assumes consumers and sellers are equals, which supports the doctrine of *caveat emptor*: Let the buyer beware.

But this assumption is clearly false: Consumers who must buy hundreds of different things can't hope to be as knowledgeable about a product as a manufacturer. So, the consumer must rely on the expertise of the seller.

THE DUE CARE THEORY: Since consumers are vulnerable, manufacturers have a duty to take care that consumers' interests are not harmed by their products

We get: "caveat vend(it)or: let the seller take care" (272)

Not only must the manufacturer live up to its explicit and implicit claims about its product, it cannot void its responsibilities through inappropriate disclaimers.

More specifically, the manufacturer must make a reasonable effort to foresee harm caused by their products, and prevent this by good design, reliable materials, quality control in assembly and testing, and by providing clear warnings, labels, and instructions

Due care principle: Manufacturers "have a duty to take special care to ensure that consumers' interests are not harmed by the products they offer them" (272)

The manufacturer is seen as a "professional" who knows more about their product and what's good for the "client" than does the client themselves

The due care principle is ***subsumed*** by the principle that "agents have a moral duty not to harm or injure other parties by their acts, and this duty is particularly stringent when those other parties are vulnerable and dependent on the judgment of the agent" (273)

Although this principle can itself be subsumed by different moral perspectives, Velasquez claims it follows most naturally from the ethics of care

But does it really follow from the ethics of care? Which element might be missing?

Rule utilitarian defence: If the "due care" rule is accepted, everyone's welfare will be advanced.

Kantian defence: Because people should be treated as ends and not merely as means, they have a positive right to be helped when they cannot help themselves

Rawls: "[I]ndividuals in the 'original position' would agree to the principle because it would provide the basis for a secure social environment" (276)

The Duty to Exercise Due Care: Only involves injurious effects a manufacturer could reasonably have foreseen

Criticisms of "Due Care"

(1) **What is *enough* due care?** A "measurement problem," since it involves determining the relative harm caused by different products.

(2) **Insufficient:** The due care approach doesn't cover for costs of problems that couldn't be avoided through due care (e.g., asbestos)

(3) **Paternalistic**: Shouldn't we let customers decide how much risk to absorb?

THE SOCIAL COSTS VIEW OF MANUFACTURER'S DUTIES

Manufacturers should always pay injury costs, even if they have exercised due care—a very strong form of *caveat vendor*

The manufacturer legally has "strict liability"

This approach is based on utilitarian arguments that society must ultimately pay for the "external" cost of harm caused by products

So, if the manufacturer pays all the costs, we get a truer measure of the cost of introducing a product into society

(1) Thus market forces will guarantee we don't produce too much of an (ultimately) expensive product

(2) Also, by making manufacturers responsible they will be better motivated to reduce possible harms and social costs, which "means a more efficient care for our human resources" (278)

(3) Finally, internalizing these costs allows the manufacturer and society to place the burden on a larger number of people, who will be better able to afford it

Problems with Social Costs View:

(1) It's unfair, because it violates principles of compensatory justice, which requires compensation only when one could have known a harm would be caused

(2) It could make customers too careless and cause a greater number of injuries

(3) SCV will make manufacturing and insurance costs too high

Response to objections: The costs are overblown: "Less than 1 percent of product-related injuries results in suits, and successful suits average payments of only a few thousand dollars" (280)

The theory is trying to solve "the problem of allocating the costs of injuries between two morally innocent parties" (280)—there may be no fair solution, but these problems still need resolution

6.5 ADVERTISING ETHICS

$236 billion spent on advertising in 2002; 6,000 ad agencies

The consumer pays for advertising costs

What do we get? consumers say, "very little."

- 66% say advertising doesn't reduce prices
- 65% say it makes people buy what they shouldn't
- 54% say it insults our intelligence
- 63% say advertising doesn't present the truth

Defenders say advertising communicates ***information*** about products to people

One study: more than half of television ads contain ***no consumer information of any kind***; in fact the primary function of ads are "to induce [people] to buy the seller's products" (281)

Examples, p 281

Social Effects of Advertising

Psychological effects: Ads can often be irritating, ugly, intrusive, repetitive, offensive; ads debase people's tastes and values about how happiness is achieved

Mary Gardiner Jones says advertising tells us:

(1) getting things will satisfy our basic needs and hopes,

(2) we are only motivated by external factors, such as keeping up with the Jones's, success is achieved by what we buy, etc.

Reply to Jones: It's really hard to change people's values, unless they are willing; so perhaps ads merely reflect those values

Advertising and Waste: Ad costs are selling costs, and do not add anything useful to the product itself

Reply 1: Ads give information about products, and that is itself a product.

Rebuttal: However, the information is minimal and better information could be communicated at a much lower cost

Reply 2: (more persuasive) Ads generate demands for products, which keeps the economy rolling, "indirectly motivating a greater productivity and efficiency and a lower price structure" (283)

Rebuttal: Studies show that advertising itself does little to stimulate demand, but largely shifts consumers from one product to another

Summary: Beyond the minimal need to give information about a product, advertising seems a huge waste of social resources; also, we may need to decrease consumption, since that is destroying the environment and removing non-renewable resources

Advertising and Market Power: Some (Kaldor) say advertising allows companies to become monopolies or oligopolies, which lead to higher consumer prices, and make it nearly impossible for new companies to break in

However, other studies have found no clear connection between amount of advertising and market concentration

Advertising and the Creation of Consumer Desires

Galbraith: Advertising is manipulative (by creating physical or psychological desires)

Psychological desires are much more plastic than physical ones

The goal of advertising is to mould consumer desires and so shift control to the firm

If so, it seems advertising seeks to diminish a consumer's ability to freely choose, and so uses consumers as mere means to producers' ends

Evaluation of complaint:

(i) Since we are unclear about the psychological effects of advertising; it's also unclear how manipulative they are; and

(ii) creating new wants has always been done, and seems harmless in itself

Still, much/most? advertising is clearly designed to manipulate, either by suggesting sexual and social fulfilment, or even by "subliminal suggestion."

Advertising and Its Effects on Consumer Beliefs

Deception examples:

- Using deceptive models
- false paid testimonials
- using "guarantee" where nothing is really guaranteed
- quoting misleading prices
- disparaging competitors in misleading ways
- mimicking well-known brand names
- announcing the sale of goods that aren't available or are defective. The consumer is then urged to buy something more expensive

Deceptive advertising fails both Kantian principles (rights to freely choose) and utilitarian ones (creating public distrust of all advertising)

6.6 Consumer Privacy

Credit bureau data banks "include information about a person's credit card accounts, mortgages, bank loans, student loans, history of payments on those with special notes on late payments, foreclosures, bankruptcies, details about loan amounts, non-payment of property taxes, personal or property liens, divorce proceedings, marriage licences, driver licences, civil lawsuits, present and past employers, present and previous addresses, and other personal information" (288-9)

Consumer Reports found 43% errors in data, yet such errors can mean a refused loan, credit card, or job.

Balancing privacy with legitimate business needs

(a) **Relevance**: data should only be relevant to the purpose of the database; e.g., credit information should not also include sexual orientation, politics, medical history, etc.

(b) **Informed**: consumers should be told that information is being collected about them and what the purpose is

(c) **Consent**: information can be collected only if the consumer explicitly or implicitly allowed this (e.g., purchase with a credit card provides data to a credit bureau, and this is a condition of the card.

(d) **Accuracy**: take reasonable steps to ensure accuracy and correction of errors; agencies should allow people to see their data and correct it

(e) **Purpose**: the purpose of the data bank must be legitimate: must create benefits for those about whom the information is being collected

(f) **Recipients and security:** the agencies must make sure their information is secure and that it is not being given to others without the consumers consent