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Essay

The Use of Economics in Defense of General Motors' Decision Not to Fix Faulty Ignition Switches Demonstrates that Economics Is Not A Moral Theory

DANIEL M. ISAACS

The General Motors Company recently faced problems with a faulty ignition switch. One might think that GM's handling of its ignition problem was obviously disastrous, as it killed and maimed many innocent people. Leading law and economics scholar Eric Posner disagrees. He maintains that GM's actions may have been reasonable if the cost to GM to fix the defect was less than the amount the ordinary person would pay to avoid the risk. His perspective is important and dangerous, because it will encourage similar behavior. Nonetheless, he offers an argument that on the surface seems persuasive. In this Essay I propose to show how Posner is wrong and what makes GM's actions wrong. Moreover, I offer a different model to understand how companies like GM should approach similar problems.

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The Use of Economics in Defense of General Motors’ Decision Not to Fix Faulty Ignition Switches Demonstrates that Economics Is Not A Moral Theory

DANIEL M. ISAACS*

“While GM heard over and over from various quarters—including customers, dealers, the press, and their own employees—that the car’s ignition switch led to moving stalls, group after group and committee after committee within GM that reviewed the issue failed to take action or acted too slowly. Although everyone had responsibility to fix the problem, nobody took responsibility.”

—ANTON R. VALUKAS, JENNER & BLOCK, REPORT
TO BOARD OF DIRECTORS OF GENERAL MOTOR
COMPANY REGARDING IGNITION SWITCH
RECALLS 2 (2014).

I. INTRODUCTION

General Motors Company (GM) engineers knew for years that the company installed faulty ignition switches in its vehicles.¹ The switches, when jostled, caused the cars to stall, leaving drivers unable to maintain their speed and disabling air bags.² Nevertheless, in meeting after meeting, and despite a toll of numerous deaths and many injuries, those with the authority and responsibility to fix the problem failed to act.³

To most people, GM’s actions were clearly wrong. However, Eric

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¹ See ANTON R. VALUKAS, JENNER & BLOCK, REPORT TO BOARD OF DIRECTORS OF GENERAL MOTORS COMPANY REGARDING IGNITION SWITCH RECALLS 1–2 (2014) (stating that despite GM engineers’ knowledge of problems with the ignition switch in early stages of production, the switch was approved for installation in several vehicles and was not recalled until 2014); Eric Posner, *In Defense of GM*, SLATE (Apr. 10, 2014), http://www.slate.com/articles/news_and_politics/view_from_chicago/2014/04/in_defense_of_gm_its_risk_assessment_about_the_faulty_ignition_switch_may.html (“GM may have known of the problem as early as 2001 but believed that a design change fixed the problem.”).

² VALUKAS, *supra* note 1, at 2; Posner, *supra* note 1.

³ VALUKAS, *supra* note 1, at 1–2; Tom Krisher, *Death Toll from General Motors Ignition Switches Rises to 57*, ASSOCIATED PRESS (Feb. 23, 2015), http://hosted.ap.org/dynamic/stories/U/US_GM_IGNITION_SWITCH_DEATHS?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT.

Posner, a leading law and economics scholar,⁴ disagrees and argues that the public may be asking the wrong question in condemning GM.⁵ He maintains that his application of economics as a moral theory demonstrates that GM may have acted properly.⁶ He contends that a manufacturer's decision as to whether to fix a defective component should turn on whether the cost of fixing the component exceeds what the "ordinary person" would pay to avoid the risk.⁷ That is, Posner asserts that if it would cost the manufacturer more than the amount the ordinary person would pay to avoid the risk, the manufacturer would be morally justified in keeping its defective product in the stream of commerce.⁸

I disagree, and maintain that economics is a poor tool for making normative decisions like the ones GM faced. Economics does have the advantage of giving definitive answers to difficult questions, and Posner's argument has some facial appeal. The problem is that he and GM are wrong and other businesses may be following GM's lead in using economics to make normative decisions. That is why Posner's perspective is so important and yet dangerous. GM's lawyers say that everyone was responsible, but no one took action.⁹ However, economics is not a measure of human responsibility to others or to society and it is, therefore, a poor tool for making the normative decisions that GM faced.

II. POSNER'S ECONOMIC DEFENSE OF GM

Posner argues that we should not be so quick to condemn GM for its failure to recall its cars with faulty ignition systems.¹⁰ Based on economic theory, he maintains that GM may have acted properly.¹¹ While Posner maintains that it is hard to know whether GM acted reasonably or not, his economic argument as to how to analyze the question is flawed.¹² His argument is based on the hypothetical amount that people would pay to

⁴ Eric Posner, U. CHI. L. SCH., <http://www.law.uchicago.edu/faculty/posner-e> (last visited Feb. 26, 2015) ("Eric Posner is [a] Kirkland and Ellis Distinguished Service Professor of Law . . . and a member of the American Law Institute."). He is also the son of Richard Posner, an earlier leader of the law and economics movement. Simon Kuper, *Book Notes: The Perils of Global Legalism*, by Eric A. Posner, 49 OSGOODE HALL L.J. 403, 403 (2011) (reviewing ERIC A. POSNER, *THE PERILS OF GLOBAL LEGALISM*).

⁵ Posner, *supra* note 1.

⁶ *Id.*

⁷ *Id.* Of course, GM has since recalled vehicles with faulty ignition switches. See, e.g., *GM Announces Six Safety Recalls*, GM NEWS (June 30, 2014), <http://media.gm.com/media/us/en/gm/news.detail.html/content/Pages/news/us/en/2014/Jun/0630-recall.html>.

⁸ Posner, *supra* note 1.

⁹ VALUKAS, *supra* note 1, at 2.

¹⁰ Posner, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

avoid the risk of death as a result of GM's faulty ignition system.¹³ Posner also argues that the public should not focus on the claim that it would have cost GM fifty-seven cents per car to fix the ignition switch defect.¹⁴ Instead, he calculates that the risk of being killed as a result of a faulty ignition switch is extraordinarily low, ".0000007 . . . [t]hat's less than one in a million."¹⁵ He reasons that during the same time period the defect increased the risk of death in 2002 "(by .0000007) from .0000567 [in other GM cars] to .0000574."¹⁶ He then applied:

a concept known as the "value of a statistical life," which is derived from studies of how much people need to be paid in order to accept a slightly greater risk of death. . . . The current standard is \$7 million. The \$7 million figure implies that an ordinary person would be willing to pay about \$5 to avoid a .0000007 risk of death in a given year.¹⁷

Doing the math, Posner calculates that GM "should have fixed the ignition switch if the cost was less than \$5 per car, multiplied by the number of years left in the car's useful life."¹⁸ Based on the value of a statistical life analysis, Posner argues that GM should have paid "\$40, or \$5 per car multiplied by the average eight years of remaining time on the road."¹⁹ GM claims that in 2007 it would have cost \$50 to fix each car, so

¹³ Posner recognizes that:

GM may have known of the problem as early as 2001 but believed that a design change fixed the problem. It revisited the issue in 2004 after receiving a complaint from a customer that the vehicle 'can be keyed off with knee while driving.' In 2005 engineers concluded that possible fixes were too costly or inadequate, and later GM told dealers to tell customers to remove heavy items from key rings. Also in 2005, a fatal accident occurred that may have been caused by the ignition switch problem. In 2006 GM began installing modified ignition switches in 2007 models. Over the ensuing years, more fatal accidents occurred and GM conducted additional investigations.

Id. However, GM did not recall vehicles containing faulty ignition switches until February 2014. Tanya Basu, *Timeline: A History of GM's Ignition Switch Defect*, NPR (Mar. 31, 2014), <http://www.npr.org/2014/03/31/297158876/timeline-a-history-of-gms-ignition-switch-defect> (setting forth a more detailed timeline concerning GM's knowledge of the ignition switch defect, which appears to have stretched back to 2001).

¹⁴ Posner, *supra* note 1. It should be noted, however, that GM was aware of the risk at least as early as 2005 but "reject[ed] a proposal to fix the problem because it would be too costly and take too long[.]" which is akin to the analysis that Ford conducted with respect to the Pinto. See Basu, *supra* note 13.

¹⁵ Posner, *supra* note 1.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* For a similar analysis involving the infamous Ford Pinto fires, see Dennis A. Gioia, *Pinto Fires and Personal Ethics: A Script Analysis of Missed Opportunities*, 11 J. BUS. ETHICS 379, 383 (1992).

Posner concluded that although “it’s close . . . if it cost \$50 to repair an ignition switch, then GM acted reasonably by saving this money rather than recalling cars for the sake of a benefit of \$40.”²⁰

III. POSNER’S ECONOMIC ARGUMENT IN DEFENSE OF GM IS FLAWED

Posner’s argument with respect to the proper moral theory GM managers should have applied in determining whether to recall the faulty ignition systems is flawed for three main reasons. First, with respect to a known defect, like the one at issue at GM, the analysis should not be based on the amount “the ordinary person” would pay to avoid the risk compared with the cost to the employer to make the repair. GM was not dealing with random events. Instead, Posner is considering a known defect that manifested in personal injuries and deaths. The rate of injury and cost of repair are immaterial when the actions at issue are known ones, as they were in the case of GM’s actions concerning the faulty ignition switch. For example, if I were to swing a bat in a public space (even if I were blindfolded) I would not know who I am going to hit, but eventually, I am likely to injure someone. When I do, factors such as my costs of not swinging the bat, the amount of time people are in the area, or the amount of money people would pay to avoid the risk of being hit are irrelevant to the question of whether I am morally justified in swinging the bat. Once GM knew that the ignition switch was defective, and that it could cause the airbags to fail to deploy, Posner’s cost-based analysis is, at best, a barometer of the improper behavior—a measure of how bad the action is—but it is irrelevant to the moral questions the company faced because he offers a measure that begins above the threshold line of unethical behavior. As a matter of business ethics, if a company knows that a component is defective, and is on notice that the defect caused injury, it should fix the defect—or not sell the product—not balance the cost of fixing the defect against the amount the average person would pay to avoid the risk so as to see whether it should do so as Posner advocates.

Second, Posner does not claim that GM actually conducted a hypothetical “value of a statistical life” analysis with respect to the GM customers who purchased vehicles with faulty ignition switches; and he recognizes that his calculations exclude the costs of personal injuries, the damage to property, and the possibility that GM knew about the defect earlier than it claims.²¹ Similarly, it is odd that Posner accepts 2007 as the date to conduct the risk benefit analysis, when GM appears to have known about the problem much earlier.²²

²⁰ Posner, *supra* note 1.

²¹ *Id.*

²² See Basu, *supra* note 13 (providing a detailed timeline of GM’s actions).

Third, no one appears to have actually disclosed the risk of death or injury to GM's customers before they purchased their vehicles or actually paid them to avoid the risk. Specifically, it does not appear that GM told potential purchasers that their cars may stall in the middle of an intersection, that their airbags would not deploy, and that GM may have known that a faulty ignition switch would cause injuries or death to some of them and that they, for a price, could avoid the risk by purchasing a product that did not contain the defect.²³

Relying on Posner's economic theory is akin to holding someone to a hypothetical contract that provides that where the cost to the company of repairing a known defect is less than the amount the consumer would pay to avoid the risk, the manufacturer would have no duty to make the repair. No one would enter into such a foolish bargain. The costs of making the repairs constitute a moral burden for the manufacturer to bear, not the customer. More generally, a problem with hypothetical contracts is that while they may be useful in modeling rules for a society,²⁴ they are not the same as real contracts, and a person should not be bound to a contract that he or she never entered into because the force of a contract comes from the will of the parties.²⁵ The buyers could not have manifested assent to the purchase of cars with faulty ignition systems because they were not offered such a contract, they did not accept it, they did not receive consideration for it, and they lacked the necessary facts—which were known by GM—to make an informed decision.²⁶ Professor Ronald Dworkin reasoned that: "[a] hypothetical contract is not simply a pale form of an actual contract; it is no contract at all . . . hypothetical contracts do not supply an independent argument for the fairness of enforcing their terms."²⁷ The fairness of their terms must come from the surrounding events, not from some hypothetical agreement.²⁸

Posner does not argue that GM and its customers actually entered into a hypothetical contract that provided that GM would only have to recall a defective part if the costs of doing so were less than the amount a hypothetical customer would pay to avoid the increased risk of driving the

²³ *Id.*

²⁴ See generally JOHN RAWLS, A THEORY OF JUSTICE (1971).

²⁵ Seana Valentine Shiffrin, *Promising, Intimate Relationships, and Conventionalism*, 117 PHIL. REV. 481, 485 (2008).

²⁶ See Ronald Dworkin, *The Original Position*, 40 U. CHI. L. REV. 500, 501 (1973) (discussing how terms of a contract cannot be enforced against a person when there was only "hypothetical agreement" to be bound by that contract).

²⁷ *Id.*

²⁸ *Id.* Posner does say that if GM knew about the increased risk earlier, or "if it turns out that more deaths can be traced to the ignition switch defect, then GM looks worse." Posner, *supra* note 1. He also recognized that he "ignored the cost of injuries and damaged property, which would change the cost-benefit analysis." *Id.*

vehicle.²⁹ Instead, he seems to imply that if rational consumers and manufacturers were to consider the situations in which customers and GM were to negotiate concerning the point when a recall was required, they would necessarily select the very point that efficiency theories identify, and that they should be bound by that hypothetical agreement.³⁰ However, no one did, and no one would enter into such an agreement.³¹ As noted above, to the extent that GM knew of the defective ignition switches, it was not dealing with accidental events. Instead, GM and its customers were dealing with what appears to have been GM's intentional decision to keep the product in the stream of commerce knowing that it injured some people. If no reasonable buyer would enter into such a contract, the hypothetical contract that Posner implicitly proposes would have no

²⁹ *Id.*

³⁰ Compare Steven Shavell, *Why Breach of Contract May Not Be Immoral Given the Incompleteness of Contracts*, 107 MICH. L. REV. 1569, 1570 (2009) (arguing that people should be bound by hypothetical contracts because they generally contain what people would reasonably have believed was contained in a more detailed contract), with Arthur Kuflik, *Hypothetical Consent*, in THE ETHICS OF CONSENT THEORY AND PRACTICE 132–62 (Franklin G. Miller & Alan Wertheimer eds., 2009) (arguing against the enforcement of hypothetical contracts).

³¹ In contrast, a report that GM asked its own outside attorney to prepare (dated a month after Posner's article) paints the picture in substantially more haunting terms:

In the fall of 2002, General Motors ("GM") personnel made a decision that would lead to catastrophic results—a GM engineer chose to use an ignition switch in certain cars that was so far below GM's own specifications that it failed to keep the car powered on in circumstances that drivers could encounter, resulting in moving stalls on the highway as well as loss of power on rough terrain a driver might confront moments before a crash. Problems with the switch's ability to keep the car powered on were known within GM's engineering ranks at the earliest stages of its production, although the circumstances in which the problems would occur were perceived to be rare. . . . The failure of the switch meant that drivers were without airbag protection at the time they needed it most. This failure, combined with others documented below, led to devastating consequences: GM has identified at least 54 frontal-impact crashes, involving the deaths of more than a dozen individuals, in which the airbags did not deploy as a possible result of the faulty ignition switch.

The below-specification switch approved in 2002 made its way into a variety of vehicles, including the Chevrolet Cobalt. Yet GM did not issue a recall for the Cobalt and other cars until 2014, and even then the initial recall was incomplete. GM personnel's inability to address the ignition switch problem for over 11 years is a history of failures.

While GM heard over and over from various quarters—including customers, dealers, the press, and their own employees—that the car's ignition switch led to moving stalls, group after group and committee after committee within GM that reviewed the issue failed to take action or acted too slowly. Although everyone had responsibility to fix the problem, nobody took responsibility. It was an example of what one top executive described as the "GM nod," when everyone nods in agreement to a proposed plan of action, but then leaves the room and does nothing.

VALUKAS, *supra* note 1, at 1–2.

persuasive or moral force.³²

I further maintain that the concept of integrity, as addressed by Bernard Williams,³³ provides an independent argument against Posner's economic argument. Williams criticizes utilitarianism based on the idea that our personal dreams and desires matter, and that choices cannot be viewed dispassionately for the benefit of all by the individual to whom the decision matters most. This is because who we are as individuals matters when we make decisions.³⁴ A frequently used hypothetical demonstrates the point. You take a boat out from a volcanic island for the day and on the way back you notice that the volcano is about to erupt. You can save five people on one side of the island or one person on the other side (and there is no time for you to pick up the five and then get the one, nor is there a way for the one to get to the five or the five to get to the one). The problem is that the "one" is your life partner, of whom you are very fond. What is the right thing to do? The point is not that you should save the five or the one, but that the decision maker matters in ethical questions. By its own terms the economic analysis offered by Posner leaves out the decision-makers because it does not offer them the opportunity to pay an additional amount to eliminate the risk and appears to have failed to provide those human beings with sufficient information to exercise their freedom to decline to purchase the GM vehicle based on known risks.

IV. ACCORDING TO CLASSICAL LIBERALISM, THE ISSUE OF PRINCIPLE FOR GM IS ONE OF DISCLOSURE AND AVOIDANCE OF FRAUD, WHICH IS INSUFFICIENT

Among the strongest reasons for rejecting Posner's economic arguments in favor of GM comes from "an unexpected friend," Milton Friedman³⁵ and classical liberalism.³⁶ Friedman tempered wealth maximization with certain responsibilities. Although he argued that managers have no social responsibility other than to maximize profits for the corporation's owners (who he identified as the shareholders), he did so

³² See JUDITH JARVIS THOMSON, *THE REALM OF RIGHTS* 182 (1990) (arguing that it is not the hypothetical contract that binds the parties but rather the strength of the reasons given for them to have actually entered into the agreement at issue); Dworkin, *supra* note 26, at 501 ("[H]ypothetical contracts do not supply an independent argument for the fairness of enforcing their terms.").

³³ See J.J.C. SMART & BERNARD WILLIAMS, *UTILITARIANISM FOR AND AGAINST* 108, 116-17 (1973).

³⁴ *Id.* at 116-17.

³⁵ Milton Friedman, of course, was one of the leaders of the free market economics school of thought at the University of Chicago, where Eric Posner is now a Professor.

³⁶ See generally MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* (1962) (discussing the concept of laissez-fair economics).

with a caveat.³⁷ He cautioned that managers must maximize profits so long as they comply with the law and avoid fraudulent actions.³⁸ So, Friedman would have also considered whether the actions at issue amounted to “deception or fraud” and asked whether they conformed to the “basic rules of the society, both those embodied in law and those embodied in ethical custom.”³⁹

By way of analogy, in the context of Friedman’s analysis of the Ford Pinto defective fuel tank, Friedman maintained that the question of principle did not involve a cost benefit analysis because such an approach would merely result in a useless debate as to whether the manufacturer picked the right numbers.⁴⁰ Instead, he maintained that the question of principle involved whether Ford should have been required to advise Pinto drivers that it made the car \$X cheaper and in doing so increased the risk of death or injury by Y%.⁴¹ He reasoned that absent such a warning, the manufacturer could be subject to liability and that such a result “was a desirable part of the market.”⁴² It follows that, according to Friedman, Ford—and, by analogy, GM—needed to disclose that they made their vehicles cost \$X less than they would have cost had they designed the car differently and that the risk of dying or being injured in the vehicles increased Y%.⁴³

A warning would have improved GM’s moral position, but warnings—and particularly GM’s warnings—are inadequate for several reasons. Generally, the idea of warnings alone is problematic because they are likely to be buried, insufficiently detailed, legally impractical for the manufacturer to state, disregarded by the average person, and most fundamentally, they do not address the underlying wrong.⁴⁴ Additionally, GM does not appear to have fully disclosed, let alone obtained consent of consumers, or paid them to undertake the increased risk.⁴⁵ It is also not

³⁷ Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970.

³⁸ *Id.* It is questionable whether GM followed this directive. See Basu, *supra* note 13 (noting that in March 2005, “GM reject[ed] a proposal to fix the problem because it would be too costly and take too long”); see also *id.* (claiming that June 2013 was the date when “[a] deposition by a Cobalt program engineer [said] the company made a ‘business decision not to fix this problem,’ raising questions of whether GM consciously decided to launch the Cobalt despite knowing of a defect”).

³⁹ Friedman, *supra* note 37. Friedman identifies “freedom as the ultimate goal and the individual as the ultimate entity in the society.” FRIEDMAN, *supra* note 36, at 5. This view seems to be the source of his requirement that corporations obey the law and avoid fraud.

⁴⁰ See pplholdthepower, *Milton Friedman Puts a Young Michael Moore in His Place*, YOUTUBE (Feb. 8, 2013), <https://www.youtube.com/watch?v=VdyKA1hLdNs> (debating the merits of a cost-benefit analysis).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Basu, *supra* note 13; Gioia, *supra* note 19, at 387.

⁴⁵ Basu, *supra* note 13.

clear whether a non-defective ignition switch would have cost more than a defective one. Indeed, if the costs are the same, Posner's argument may fail by its own terms. That is so because if managers are going to conduct an economic analysis it needs to be performed at the time of purchase, as that is when the consumer is supposedly considering whether to accept the risk. According to Posner, the numbers at issue at that point are the amount the customer would pay to avoid the risk and the difference in cost between a non-defective component and a defective one.⁴⁶ If the customer would pay \$40 to avoid the risk, and the cost of a non-defective product was no more than the cost of a defective one, then Posner's argument fails on its own terms.

The problems for economic theory as applied to the automobile defect cases run even deeper. The underlying assumption of Adam Smith's invisible hand theory⁴⁷ is that everyone has full information and that where everyone has full information the market will operate efficiently.⁴⁸ Yet, Posner does not require full disclosure or any disclosure to the consumer.⁴⁹ The company is the one that makes the decision for the consumer as to how much risk she should bear based on whether the cost of fixing the defect is more or less than the amount a hypothetical consumer would pay to avoid the risk and the cost of making the repair.⁵⁰ In this way, the consumer does not have full information. As such, Posner's economic theory is internally inconsistent.

V. SEEKING A SOLUTION

For a moral theory to avoid monstrous results, its rules must yield results consistent with our moral intuitions of justice.⁵¹ Although deontological principles may sometimes lack the clarity of an economic formula, sometimes one must think after applying company scripts.⁵² For Dennis Gioia, the Ford recall manager before the recall of the Pinto and the catastrophic deaths of four teenage girls, the focus, in retrospect, is based

⁴⁶ Posner, *supra* note 1.

⁴⁷ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 456 (R.H. Campbell et al. eds., 1976).

⁴⁸ See *id.* at 23, 130 (describing how merchant prices relate to information, and comparing information to success overall in the market).

⁴⁹ Posner, *supra* note 1.

⁵⁰ *Id.*

⁵¹ See generally Richard Posner, *Utilitarianism, Economics, and Legal Theory*, 8 J. LEGAL STUD. 103 (1990). Friedman did not advocate disclosure because he favored consumers over shareholders (he did not), but rather because he believed in maximizing individual freedom. Because Posner's economic analysis would allow GM to withhold facts material to consumers' decisions to purchase the product based on considerations of efficiency, the corporation rejects the ability of individuals to make free choices and thereby violates the principles that underlie classical liberalism. *Id.*

⁵² Gioia, *supra* note 19, at 387.

on other principles.⁵³ He believes that he should have recalled the vehicle despite the economic analyses on the ground that some things are just wrong.⁵⁴ It follows that to the extent that GM knew that its ignition switches were defective and likely to cause some injuries as a result of the defect, it had a responsibility to correct the defect. Posner's economic analysis is irrelevant to the question of whether we want to live in a society where companies can knowingly place defective products in the stream of commerce with the knowledge that people are likely to and are actually being harmed as a result—even if the percentage of people hurt out of the total number of customers is small.⁵⁵ The following example highlights the point, albeit somewhat dramatically. To someone forced to play Russian Roulette, rates and chances of death are irrelevant to the question of whether it was wrong for others to force them to play. Death in the game is certain for at least one person; the questions of who and when are unknown but are nearly irrelevant to the question of whether the directors of the game should remove the bullet (or, in the case of GM, the defective product).

As Gioia recognizes, he must live with the likelihood that his decision (and the decisions of others at Ford) to follow a cost benefit analysis caused the death of innocent people the manufacturer had a duty to protect.⁵⁶ It follows that the issue is not about assessment of economic risks. The question is about the autonomy and rights of human beings to not be subjected to risks manufacturers know to exist. Therefore, to determine if GM had a duty to fix the faulty ignition switches, we should not rely upon economic rules that risk human life and injury based on a comparison of costs and benefits. Instead, we must consider the facts of each case and determine what the company knew, when it knew it, and what it did with the information that it had.

VI. CONCLUSION

To the extent that GM knowingly left cars with defective ignition switches that it knew could cause cars to stall and air bags to fail to deploy in the stream of commerce, GM's actions were morally wrong. GM cannot be excused from those moral wrongs based upon the vast number of

⁵³ *Id.* at 380, 382. Gioia critically analyzed Ford's cost benefit analysis with respect to its decision whether to recall the Pinto. *Id.* at 383–84. The Pinto, of course, had a defect in its design that made it more likely that its fuel tank would rupture causing the car to explode when hit from behind. *Id.* at 381.

⁵⁴ *Id.* at 382.

⁵⁵ Richard Posner sought to distinguish utilitarianism and other moral theories and defend wealth maximization as a basis for making legal decisions on the grounds that it avoids some monstrous results of utilitarianism. See generally Posner, *Utilitarianism, Economics, and Legal Theory*, *supra* note 51.

⁵⁶ Gioia, *supra* note 19, at 382.

vehicles it manufactures and the low risk of harm to individual drivers. It may be that the chances of winning a lottery are low, but people play because they know someone is going to win. Posner essentially argues that the chances of your car being the one with the faulty ignition switch that malfunctions at a time and place that you cannot safely get off the road may be too low for GM to care about. But I maintain that where GM knows of the defect and that human beings have been injured as a result of it, GM must care. To the extent that concern for profits or application of Posner's economic theories might permit a manufacturer not to care, it may maximize profits, but it cannot be said to be acting morally.

In short, Posner's implicit proposition that there should be no consideration of happiness, human flourishing, right and wrong, or fairness or justice (other than a cost benefit analysis) in connection with an evaluation of ethical issues in business—like GM's question of whether to recall defective ignition systems—is inconsistent with the moral intuitions of most people. Certainly, it is far from clear that the "good life"⁵⁷ is better approached from the perspective of wealth than from happiness or personal autonomy. Richard Cory had all the money a man could want.⁵⁸

⁵⁷ R. SOLOMON, MORALITY AND THE GOOD LIFE: AN INTRODUCTION TO ETHICS THROUGH CLASSICAL SOURCES 1–10 (2009).

⁵⁸ EDWIN ARLINGTON ROBINSON, COLLECTED POEMS (1922) (highlighting that considerations other than economic ones matter most Edwin Arlington Robinson wrote *Richard Cory*).

*Whenever Richard Cory went down town,
We people on the pavement looked at him:
He was a gentleman from sole to crown,
Clean favored and imperially slim.*

*And he was always quietly arrayed,
And he was always human when he talked,
But still he fluttered pulses when he said,
"Good-morning," and he glittered when he walked.*

*And he was rich—yes, richer than a king—
And admirably schooled in every grace:
In fine, we thought that he was everything
To make us wish that we were in his place.*

*So on we worked, and waited for the light,
And went without the meat and cursed the bread;
And Richard Cory, one calm summer night,
Went home and put a bullet through his head.*

Id.

