

**AUTOMOBILITY AND
FREEDOM PROJECT**

**SUDDEN IMPACT:
THE COLLISION BETWEEN
THE AIR BAG MANDATE AND ETHICS**

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SUMMARY

Air bags save approximately two dozen lives for each one lost. This seems to be an eloquent testimonial to the air bag mandate, but on further scrutiny a basic moral dilemma appears. Air bag fatalities do not occur randomly, but instead are concentrated among the young, the old, the frail, and short drivers. The air bag mandate turns out to be not simply a law that produces safety benefits tempered by some occasional harms. Instead, it is a law that knowingly enhances the safety of one identifiable group of citizens at the expense of another. It literally redistributes life expectancy between these two classes.

For this reason, arguments against the air bag mandate go beyond the criticisms that are frequently levelled at laws that seek to protect people “for their own good”. Often, these latter criticisms are themselves quite substantial, but in the case of the air bag mandate we find that it uniquely contravenes some basic moral principles — principles that address the acceptability of forced trade-offs across persons and that govern the relationship between a liberal government and its citizens.

The most fundamental ethical principle deals with the uniqueness and dignity of each person. This is expressed in such well-accepted ideas as the Hippocratic Oath’s insistence on “First, do no harm,” and Immanuel Kant’s dictum that individuals be treated as ends in themselves, rather than as mere means by which others can accomplish their own goals. This idea finds its expression in a host of laws aimed at protecting people from each other and from government. But the air bag mandate, in knowingly advancing the life prospects of one group of citizens at the expense of another, violates this most fundamental moral precept.

The mandate cannot be justified on the ground that it saves more lives than it kills, because balancing life against life is odious. Nor can it be justified with the claim that very few social policies produce only winners and no losers. It is usually impossible to predict in advance just who such losers will be, but in the case of the air bag mandate those who will be placed in jeopardy are readily identifiable. No one will argue that being an infant or aged or frail person is a ground for having burdens thrust on one in order to render better off those who are none of these. If anything, the reverse is true: the particularly vulnerable should receive extra protections, not fewer.

The air bag mandate has generally been discussed as an issue of public health. In assessing it we need to remember that morality does indeed matter, and it is simply unacceptable to save lives by knowingly forfeiting others, especially when those others are the weakest and most vulnerable among us.

The Competitive Enterprise Institute's AUTOMOBILITY AND FREEDOM PROJECT

The car is under increasing attack as a polluter, gas guzzler, creator of congestion and destroyer of civilized life. These critiques are flawed in many respects. To the extent that they are valid, however, they can be traced to the fact that the car is a privately produced, privately owned technology that operates in a political environment. With few exceptions, streets, roads, and highways are built and managed by government agencies. The resulting conflict of incentives makes cars an easy scapegoat for the consequences of political misfortune.

In the private world, for example, congestion is viewed as an opportunity rather than a problem. The owner of a newly crowded restaurant expands her facility, adjusts for pricing, or creates "early bird" specials. Only in the political world is congestion viewed as an intractable problem.

Beneath the flawed critiques of motor vehicles is a more fundamental claim – that automobility is destructive to society. Such views of mobility are not new. The Duke of Wellington, 150 years ago, opposed the growth of railroads because they would "only encourage the common people to move about needlessly." Today, the car is attacked on similar grounds, as fragmenting our communities and making our cities unlivable.

We are in danger of forgetting that there is a basic moral dimension to mobility – to being able to go where we want, when we want.

CEI's **Automobility and Freedom Project** attempts to reestablish this moral dimension and to examine the possibilities of a fully privatized automobile transportation system.

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IN THE BLINK OF AN EYE

In the blink of an eye – a John Elway forward pass travels toward its receiver at over 70 miles per hour; Nolan Ryan’s fastball darts from his hand at 100 miles per hour; Pete Sampras’s serve booms across the net at 120 miles per hour. Unless you know how to play the game, you’re advised to stay safely out of the way. But if you are in even a minor automobile fender-bender, you can be on the receiving end of an air bag deploying at up to 200 miles per hour.

For most people most of the time, air bag impact is benign compared to the impact they would have experienced had they been traveling unprotected. Though the air bag falls short of seat belts in terms of the level of protection it affords, the air bag is a wonderful safeguard. Since 1986, over 1000 lives have been saved and numerous injuries averted. But the air bag’s benefactions do not come free of cost. Although deployment usually produces nothing worse than quickly-healed bruises, a significant minority fares worse – 50 people have been killed by air bag impact, almost always in low speed accidents from which they otherwise would have walked away.

Any fatality is cause for regret, but realism compels us to acknowledge that few valuable interventions come altogether without cost. People die on operating tables during routine surgery, drown while enjoying a swim, and are hit by lightning while out on a golf course. We can and should try to minimize the occurrence of such tragic outcomes, but as Milton Friedman famously observes, there is no such thing as a free lunch. Air bags save on the order of two dozen lives for each one lost. It would seem on first blush that this lopsided ratio of 24:1 lives saved to lives lost is an eloquent testimonial to the regulatory regime that for the past two decades has been moving toward mandating air bags in all new vehicles. Few public safety measures, we might say, can claim so enviable a record of success.

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Complicating the appraisal, however, is the fact that air bag fatalities do not occur at random. Most air bag victims are children, typically infants or toddlers, traveling in the front seat either unbuckled or strapped into child carriers. The air bag is most forceful as it leaves the dashboard, and carriers, especially backwards-facing ones for infants, bring their occupants closer to the point of explosion. Already vulnerable because of their small size, the forward location heightens their risk. Otherwise innocuous collisions produce crushed skulls, even a reported decapitation in an Idaho parking lot. Also at considerable risk are the very old, the very frail, and short drivers who seat themselves close to the steering column. For them the air bag is not a friendly bodyguard but potentially a weapon that maims and kills.

By requiring manufacturers to install air bags in all new cars, the federal government is not simply mandating a policy that confers substantial benefits on the population at large, tempered by occasional harms. Rather, governmental policy deliberately and knowingly enhances the safety of one identifiable group of citizens at the expense of another. It literally redistributes expected life years between these two classes.

NOT JUST ANOTHER REGULATION

Some observers are troubled by governmental edicts designed to protect people against themselves. They believe these regulations will, “for their own good”, force them to act in ways they less prefer. Regulations could also attempt to engineer compliance by subsidizing officially approved behavior and laying taxes and other penalties on that which is disapproved. For one who takes seriously the conception of a free society as an order in which individuals are at liberty to chart their course according to their own lights just so long as they do not thereby impugn the like liberty of others, this sort of governmental paternalism is odious. It does seem more appropriate to house the nanny in the children’s wing than along the vast corridors of the Department of Transportation.

In the interest of full and open disclosure (something of a rarity these days in Washington, I am told), I confess that I am among those who are troubled by these incursions on individual choice. If people wish to drive around in their cars unbelted or dispense with helmets while motorcycling, choose to smoke cigarettes or consume slabs of marbled beef followed by gooey chocolate deserts, I may regard their decisions as imprudent. But if people engaging in these behaviors are competent adults, I do not see how I – or anyone – enjoys the prerogative of constraining them to do otherwise.

On other occasions I have set out the general case for less obtrusive government. Here, however, I deliberately refrain from invoking these arguments because they would disguise what is particularly troubling about the air bag scenario. One need not be a dyed-in-the-wool opponent of paternal government camping out somewhere on the libertarian fringe to find this

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particular manifestation of regulatory oversight disturbing. That is because it contravenes broadly shared moral principles that address the acceptability of forced tradeoffs across persons and that govern the relationship between a liberal government and its citizens.

There is no more fundamental principle of ethics than the proposition that human beings are special. Each person manifests a uniqueness that confers a dignity that no mere thing possesses. They are not interchangeable components of a social whole who may be plugged in and plugged out like chips in a computer. In the Western tradition of moral reflection, this understanding has been expressed in many forms. One is the theory of basic human rights that establish zones of limited sovereignty within which individuals may act without interference so long as they respect the similar liberty of others. Another is traditional natural law doctrine that insists that no otherwise good state of affairs can be pursued if doing so requires acting with injustice toward another human being.

Yet another version is the Hippocratic Oath's insistence, "First, do no harm." But this moral insight was perhaps best expressed by the German philosopher, Immanuel Kant, when he insisted that human beings, whether oneself or another, are not to be used as mere means for someone's projects but rather must always be treated as ends in themselves (this is one formulation of what Kant called the Categorical Imperative, the supreme principle of morality.) Admittedly, it is not altogether clear what this dictum comes to, and for the past 200 years, ethical debate has swirled around the question of what it is to treat someone as an end. But even though there may be legitimate doubt at the periphery concerning what falls under this prescription and what outside of it, there are numerous clear cases of its application, cases to which there is general assent. They spotlight what is morally distinctive about persons. Let me offer a few simple examples.

Although it is entirely reasonable to take apart one auto to salvage parts that will restore five other vehicles to operability, it is strictly impermissible to mine one healthy person's body for organs that could be transplanted to save five other individuals. Indeed, although this is slightly more controversial, courts have consistently ruled that no one may be compelled to provide bodily tissue to another, even when the potential recipient needs that tissue to live and the donor's life or health would not be substantially imperiled. Similarly, it is unacceptable to frame an innocent person in a kangaroo court setting so as to mollify the mob ominously milling about.

Virtually every breach of common morality can be understood as falling under this Kantian interdiction. Fraud and deceit evince a willingness to manipulate the beliefs and desires of others as to render them instruments for one's own designs; assault and rape run roughshod over the essential embodiedness of persons; theft is the action of treating someone as a resource that one may freely plunder for one's own ends; murder is literally the obliteration of personhood. Using others as mere means achieves its most

fully developed institutional form in the practice of slavery. This country waged a long and bitter war to exorcize that demon. Americans least of all peoples can afford to be cavalier about sacrificing the interests of some for the good of others.

A KNOCK-OUT BLOW TO POLITICAL NEUTRALITY

It seems hard to avoid the conclusion that insofar as current air bag policy knowingly advances the life prospects of one group of citizens at the expense of another, it violates this most fundamental of moral precepts. It also puts the bedrock principle of liberal democratic government, political neutrality, in jeopardy. Briefly, this is the requirement that the state not take sides concerning the projects and pursuits of its citizens. Individuals acting in their private capacity are free to be passionately partisan with regard to their religious creeds, ideological convictions, aesthetic tastes, and conceptions of the good life. The state, though, is not permitted to anoint winners and losers in these disputations. Rather, its role is to be the fair and impartial enforcer of the rules under which individuals operate, an umpire rather than a player in the game.

The principle of political neutrality as so stated is normative, not descriptive. That is, it prescribes a standard of legitimate state activity. It certainly does not report the practice of actual governments. These, throughout most of recorded history, have been consistently and blatantly non-neutral. Governments almost without exception enforced state religions, and even when they afforded to dissenting forms of worship some latitude within which they could find expression, it was in a distinctly second-class mode. Similarly, states catered to the interests of favored ethnic groups, enshrined the privileges of a hereditary ruling class, outlawed disapproved political activity, and censored manners and morals.

It is only recently that we observed the emergence of a significantly different conception of legitimate government, one in which it became imaginable that individuals might be afforded liberty to pursue happiness as they see fit rather than as prescribed from above by their masters. During the preceding three centuries, campaigns for individual self-direction have been fought on many fronts: religious liberty; an unconstrained, vigorous press; acknowledgment that political opposition is not synonymous with treason; abolition of monopolies and other forms of economic favoritism; allowing workers the right to organize and bargain collectively; and pruning from the law provisions that discriminate on racial or sexual bases. The particular objects of the campaigns differ, but what the various liberal crusades share is commitment to maintenance of a regime of equal liberty for all under the rule of law. Although this ideal has never been fully realized anywhere, including in the United States, it is not just some philosopher's fancy. Rather, it firmly underlies both the Declaration of Independence and the Constitution. From George Washington to Martin Luther King it has illumined our nation's better moments.

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There is overwhelmingly strong evidence that air bags save lives. But the evidence is also compelling that air bags kill babies and other vulnerable individuals. The number of those saved is larger than those killed, so on balance air bags promote public health. But balancing life against life is odious.

Sometimes, for example in lifeboat or battlefield triage cases, it is unavoidably thrust upon us. Here, however, it is abundantly avoidable. If air bags were options that car buyers could select if they desired, but forgo if their individual circumstances so dictate, then no class of individuals would be forced to be the unwitting instruments of others' ends. The government would not be acting with partiality toward some at the expense of others. A second-best option would be to retain mandatory air bags but to allow inclusion of a switch that disables or renders them less forceful. (This is second-best because those who might wish to be without functional air bags are financially penalized compared to a scenario in which they need not purchase them in the first place.) Instead, the Department of Transportation has insisted on a monolithic policy of air bags *uber alles*.

THE GOVERNMENTAL RESPONSE

What will the regulators say in defense of their position? They might argue that to impose on social policy the condition that it produce only winners and no losers is unrealistically idealistic. Virtually nothing could traverse so high a barrier. For example, polio vaccination has mostly eliminated what was once a deadly scourge in this country. Yet each year some individuals come down with polio, in almost every instance from the vaccine itself. Should we allow the return of polio epidemics rather than accede to these very occasional instances of harm due to inoculation? Only a fanatic would lend any credence to that suggestion. It is only slightly less fanatical to allow vaccination the status of a "consumer option" rather than mandatory for all. Similarly, the regulator may claim, it is arrant fanaticism to cavil at air bag rules that save a dozen or two lives for each one forfeited.

That objection misfires because the analogy on which it rests breaks down. To be sure, some individuals who are vaccinated would have been better off had they not received the vaccine. However, we cannot tell in advance which ones they are. For each person getting the vaccine, the *ex ante* probability of a polio-free life is augmented. Probabilities are not certainties, so *ex-post* some will find that they have pulled the short straw and are worse off. This is terrible for those who lose, but it does not falsify the proposition that for all players it was a good bet to take.

Such is not the case, however, with air bag provision. Babies and small adults are placed in jeopardy so that those older and larger can be afforded greater protection. The regulators know this now, and the record indicates that they knew it back in the late 1970s when air bag regulations were initially being promulgated. So a closer analogy would be to a world in which vaccine

is produced by knowingly and deliberately inflicting some with full-blown polio so that their tissues can be harvested and used to confer immunity on others. Would we regard it as acceptable social policy to infect some so that others may be kept disease-free? I am quite sure that the answer is no, and that it would remain no even if the ratio of winners to losers were quite high. Our moral sensibilities are affronted by so blatant a use of some for the sake of others. With Hippocrates we would demand, “first, do no harm.”

A different sort of response is that the moral requirements sketched out above, especially political neutrality, admit of ample exception. For example, the government allocates funds for relief of the poor. This money does not fall like manna from heaven, but instead is drawn from other, more well-endowed pockets. Why do we not say that taxation for redistributive purposes is to treat some – the rich – as mere means for the ends of others? Wouldn't an invocation of Kant's credo with regard to welfare programs seem ludicrous?

I must confess that to me it does not seem ludicrous. Rather, I am inclined to believe that wide-ranging interpersonal transfers so as better to approximate some planner's blueprint for social justice do indeed cross the boundaries of political neutrality, and that a considerably pared-down welfare apparatus would better serve the principle of neutrality. This, though, is a controversial issue concerning which reasonable people may – and do – differ. Rather than pursue it here, I simply note that there exists general agreement that differences in wealth can afford relevant reasons for treating people differently, specifically for moving funds from the relatively rich to the relatively poor. Disagreements will arise concerning the extent to which this ought to be performed by the government rather than through private charitable institutions. On the other hand, for the state to advantage some and disadvantage others on grounds of their race or religion is clearly an infringement of neutrality. Even if we do not have a comprehensive theory to account for moral relevance, we can usually recognize it when we see it.

It is at least arguable that those who are financially well-off should, for that reason, bear some burdens for the sake of assisting the poor. But no one, I think, will argue that being an infant or aged or frail person constitutes grounds for having burdens thrust on one so as to render better off those who are none of these. If anything, the reverse is the case – we are liable to believe that the particularly vulnerable should be recipients of extra protections. To the extent that air bag regulations engender the opposite, they are perverse.

Unfortunately, just that sort of perversity seems to pervade the whole fabric of air bag regulation. As noted at the outset of this discussion, air bags burst out at speeds of up to 200 miles per hour. If they were less forceful they would still provide adequate protection to motorists who are belted in, but those who neglect to use seat belts will sometimes suffer injuries that high-speed air bag deployment could have obviated. There exists, then, a tradeoff implicit in regulation as it stands: it affords greater protection to the lazy and imprudent at the expense of babies and others.

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There is nothing in the technology of air bags that renders this tradeoff unavoidable. Rather, it has been deliberately engineered through governmental mandates. Similarly, if air bags could be disabled via a switch, then foolish or unwise drivers might forgo protection that they would be better off having. To protect them against themselves, parents are precluded from better protecting their children. Can anyone reasonably deny that these examples of regulatory partiality are morally bizarre?

GOVERNMENT BLAMING THE TARGETS OF ITS OWN PATERNALISM

One response that the National Highway Traffic Safety Administration has offered in the wake of recent revelations about air bag injuries and fatalities is that children under the age of 13 should not, whether in car seats or otherwise, be placed in the front seat. Their safety will be considerably enhanced by a back seat location. The intended implication is that children are not so much the victims of air bags as they are of parental malfeasance.

The point is well-taken to an extent. To assign credit or blame to regulators does not absolve parents and other adult guardians of responsibility. They ought not be placing children in the line of fire. Quite true. However, this response hardly gets the regulators off the moral hook. First, it does not address the issue of other vulnerable populations such as short drivers and the elderly. Second, it sometimes is impossible or impracticable to place all child passengers in the back seat. And third, it is in tension with a regulatory structure that is predicated on the assumption that individuals are not competent enough to be left to make their own choices. At the very least, then, it is a piece of bad faith to downplay the enormity of the human costs air bags impose by protesting that they would be lower if people were generally more provident.

MORALITY BEFORE TECHNOCRACY

There are numerous other grounds for questioning the federal government's air bag mandates. Insistence on universal employment of this one safety device precludes experimentation that might generate better alternative safety measures. If cars are made more expensive by the requirement that they carry air bags, then car owners will have less money available to spend on other safety-enhancing measures. For example, they may not be able to afford to get their vehicles serviced as often as they otherwise could. Perhaps they will be forced to drive around longer in older, relatively unsafe automobiles rather than purchase newer, relatively safe ones. Or with the money freed up by not purchasing an air bag, consumers could purchase larger vehicles that better withstand crashes. (At least they could if the government did not discourage manufacture of big cars that burn more gas than little cars. This is yet another irony transfixed like a hapless fly in the regulatory web.) It is also the case that individuals differ in the strength of their needs and desires for

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enhanced safety. Someone who drives defensively and who routinely uses his seat and shoulder belts may quite reasonably judge that the increment of safety afforded at the margin by installation of an air bag does not justify its cost.

These grounds for opposing mandatory air bags commonly pop up in the policy debate. Each is essentially based on an economic way of thinking that bids us to be aware not only of the benefits that we procure through our expenditures but also their associated costs. In calling these reasons economic, I do not mean to disparage them. To the contrary: such efficiency considerations are central to rational policy-making. However, they often spawn a response to the effect that issues of public safety transcend dollars-and-cents calculations. Life is too precious, it will be said, to be stuffed into Procrustean cost-benefit computations. Morality ought to trump mere monetary considerations.

I could not agree more. This discussion has insisted that morality does indeed matter. It has, however, seriously called into question whether federal bureaucrats and so-called consumer affairs advocates genuinely do occupy the moral high ground. The fact that air bags on balance save lives does not necessarily secure for them this position. There are other criteria that must be met, criteria such as treating individuals as ends in themselves and not bending the technology of governance to the service of some classes of citizens at the expense of others. It is simply unacceptable to save lives by knowingly forfeiting others. If Americans have to be protected against themselves, an imperative that I am loath to acknowledge, then let us at least do so in a way that does not consign the weakest and most vulnerable among us to second-class status.

*Morality does
indeed matter.*

ABOUT THE AUTHOR

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