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Book Reviews

Thomas G. Field Jr.
Professor Emeritus, University of New Hampshire School of Law

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Book Reviews

VALUING HEALTH RISKS, COSTS, AND BENEFITS FOR ENVIRONMENTAL DECISION MAKING. (P. Brett Hammond and Rob Coppock, eds., National Academy Press 1990) [231 pp.] Appendix, executive summary, notes, preface. LC-89-64210; ISBN 0-309-04195-3. [\$20.00, \$24.00 export. 2101 Constitution Avenue, NW, Washington, DC 20418.]

This well produced paperback is the third in a series of studies of risk management undertaken by the National Research Council. The other two are *RISK ASSESSMENT IN THE FEDERAL GOVERNMENT: MANAGING THE PROCESS* (1983) and *IMPROVING RISK COMMUNICATION* (1989). Anyone interested in the subject matter of this journal is likely to have read the first two and will certainly want to read if not acquire this one.

The work was commissioned by the Environmental Protection Agency (EPA), but the product seems no more limited in applicability than the first (commissioned by the Food and Drug Administration). The goal was to help agencies deal with being between a rock and a hard place — with, e.g., legislation (or general political sentiment) appearing to mandate action without regard to cost and the Office of Management and Budget calling for economic analysis under Executive Order 12,291 (1981). A committee was formed in 1986 and subsequently commissioned papers. In June 1987, a two day conference was held, and those papers and an EPA case study helped to focus the discussion.

The first of eight chapters is a committee introduction, and the last is its summary of conference discussions, conclusions and recommendations. The remainder of the book consists of revised individual conference presentations and the case study (an appendix), written predominantly by economists.

The basic tension is illustrated, at 16, by Milton Russell. There, he briefly discusses what he characterizes as a “rational” WWII decision to

have British convoys cease rescuing victims of submarine attacks and suggests that “smart” decisions may not always be “wise” ones.

Being smart, much less wise, is not easy. The last of four committee conclusions, at 206, is that “... there is no consensus regarding the use of a specific set of analytical techniques for a specific purpose.” This is exacerbated by a lack of consensus on, e.g., the value of human life (and often a studied avoidance of the issue) or methods appropriate for determining it in widely varying circumstances. See, e.g., the first piece in this issue and M. BREITENBERG, *NEED FOR ECONOMIC INFORMATION ON STANDARDS USED IN REGULATORY PROGRAMS...* (U.S. Dept. Commerce 1980).

These and other problems are reflected in the committee’s recommendations, at 207–8, namely that (1) benefit-cost analysis be seen as a *tool* to aid decision making *not* as itself a decision-making *mechanism*; (2) more attention be given to nonquantifiable factors; and (3) expanded use be made of:

systematic, consistent formal peer review... to assess appropriateness of assumptions, techniques, and approaches; limitations of data and methods; and the formal or informal treatment of moral and ethical concerns.

The book furnishes much food for thought. For example, one may wonder: What “peers” will review treatment of “moral and ethical concerns?” It seems likely to move us closer to dealing with the ultimate challenge: integrating risk (and benefit) assessments and benefit-cost analyses into decisions that everyone finds *acceptable*, if not agreeable.

THE LIABILITY MAZE: THE IMPACT OF LIABILITY LAW ON SAFETY AND INNOVATION. (Peter W. Huber And Robert E. Litan, eds., Brookings Institution 1991) [502 pp.], Foreword, figures, notes, references, tables, index. LC-91-9387 (CIP) ISBN 0-8157-3761-0 (paper); 0-8157-3760-2 (cloth). [\$16.95 paperback, \$35.95 cloth. 1775 Massachusetts Ave., NW, Washington, DC 20036.]

This collection of essays attempts to assess whether tort liability in the U.S. encourages or discourages the delivery of less risky products and services. From the perspective of someone who has taught product liability, federal safety regulation and patent law, each for well over fifteen years, the result is fascinating — and, in one case, distressing.

The book begins with an editors' overview and continues with the work of twenty scholars from several different disciplines, including economists, engineers, lawyers (although the editors attempted, for unstated reasons, to avoid them where possible), physical scientists and physicians. In the second chapter, Gary T. Schwartz provides an excellent general discussion of product liability and medical malpractice from a comparative, international perspective. In the third, W. Kip Viscusi and Michael J. Moore take a broad look at product liability and innovation, but the impact of this analysis is diminished by the blanket assumption that product patents always cover consumer goods and process patents always cover manufacturing processes, neither of which is true.

The remaining ten chapters examine five specific sectors of the economy: private aircraft, automobiles, chemicals, pharmaceuticals, and medical practice. Each sector is the subject of two chapters addressing, first, the effects of tort liability on safety and, second, its effects on innovation. Moreover, with the exception of the chemical industry, each pair is followed by the comments of another writer. The result is quite even-handed. For example, John Graham takes a look at whether tort litigation has motivated companies to produce safer cars, concluding that

factors such as unfavorable media attention and government regulation get most of the credit. Then, Murray Mackay argues that “strict liability has had a negative influence on [automobile design] innovation.” In following comments, Robert Crandall concludes that Mackay’s approach is more useful for formulating hypotheses than for testing them and that Graham may not have given enough credit to the effect of tort litigation in, e.g., generating media attention.

From all of this, Huber and Litan find little solid evidence but conclude that what little there is fails to support the proposition that tort liability deters unsafe behavior. (Nor does it support the converse, raising the issue of *who has the burden* of proof.) They find the effects on innovation to be more substantial but inconsistent. Not surprisingly, they recommend more research while acknowledging serious difficulties; e.g., comparative international studies are complicated by significant procedural differences between domestic and foreign litigation, and comparative domestic studies are difficult when few products are sold only within a single state’s jurisdiction.

Lack of data, however, does not deter them from recommending that: (1) as suggested by Graham, attempts be made to reward good, rather than punish bad, behavior; (2) more be done to reduce uncertainty in the tort system; (3) risk-utility calculus be applied to tort law itself; and (4) the federal government become more aggressive in collecting and publishing safety-related information. It is hard to disagree in principle, but each suffers from lack of specificity.

That aside, the editors and publisher are to be commended for undertaking this project and for assembling a set of papers that should be regarded as “must” reading for any person interested in the U.S. tort system.

Thomas G. Field, Jr.†



† I appreciate Allan Wheatcraft’s writing a first draft of the second review.