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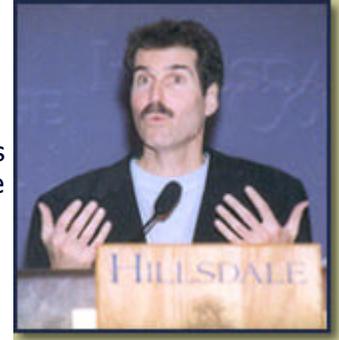
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The Real Cost of Regulation

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The following is an abridged version of Mr. Stossel's speech delivered on February 20, 2001, in Fort Myers, Florida, at a Hillsdale College seminar.

When I started 30 years ago as a consumer reporter, I took the approach that most young reporters take today. My attitude was that capitalism is essentially cruel and unfair, and that the job of government, with the help of lawyers and the press, is to protect people from it. For years I did stories along those lines - stories about Coffee Association ads claiming that coffee "picks you up while it calms you down," or Libby-Owens-Ford Glass Company ads touting the clarity of its product by showing cars with their windows rolled down. I and other consumer activists said, "We've got to have regulation. We've got to police these ads. We've got to have a Federal Trade Commission." And I'm embarrassed at how long it took me to realize that these regulations make things worse, not better, for ordinary people.

The damage done by regulation is so vast, it's often hard to see. The money wasted consists not only of the taxes taken directly from us to pay for bureaucrats, but also of the indirect cost of all the lost energy that goes into filling out the forms. Then there's the distraction of creative power. Listen to Jack Faris, president of the National Federation of Independent Business: "If you're a small businessman, you have to get involved in government or government will wreck your business." And that's what happens. You have all this energy going into lobbying the politicians, forming the trade associations and PACs, and trying to manipulate the leviathan that's grown up in Washington, D.C. and the state capitals. You have many of the smartest people in the country today going into law, rather than into engineering or science. This doesn't create a richer, freer society. Nor do regulations only depress the economy. They depress the spirit. Visitors to Moscow before the fall of communism noticed a dead-eyed look in the people. What was that about? I don't think it was about fear of the KGB. Most Muscovites didn't have intervention by the secret police in their daily lives. I think it was the look that people get when they live in an all-bureaucratic state. If you go to Washington, to the Environmental Protection Agency, I think you'll see the same thing.

One thing I noticed that started me toward seeing the folly of regulation was that it didn't even punish the obvious crooks. The people selling the breast-enlargers and the burn-fat-while-you-sleep pills got away with it. The Attorney General would come at them after five years, they would hire lawyers to gain another five, and then they would change the name of their product or move to a different state. But regulation did punish legitimate businesses.

When I started reporting, all the aspirin companies were saying they were the best, when in fact aspirin is simply aspirin. So the FTC sued and demanded corrective advertising. Corrective ads would have been something like, "Contrary to our prior ads, Excedrin does not relieve twice as much pain." Of course these ads never ran. Instead, nine years of costly litigation finally led to a consent order. The aspirin companies said, "We don't admit doing anything wrong, but we won't do it again." So who won? Unquestionably the lawyers did. But did the public? Aspirin ads are more honest now. They say things like, "Nothing works better than Bayer" which, if you think about it, simply means, "We're all the same." But I came to see that the same thing would have happened without nearly a decade of litigation, because markets police themselves. I can't say for certain how it would have happened. I think it's a fatal conceit to predict how markets will work. Maybe Better Business Bureaus would have gotten involved. Maybe the aspirin companies would have sued each other. Maybe the press would have embarrassed them. But the truth would have gotten out. The more I watched the market, the more impressed I was by how flexible and reasonable it is compared to government-imposed solutions.

Market forces protect us even where we tend most to think we need government. Consider the greedy, profit-driven companies that have employed me. CBS, NBC, and ABC make their money from advertisers, and they've paid me for 20 years to bite the hand that feeds them. Bristol-Myers sued CBS and me for \$23 million when I did the story on aspirin. You'd think CBS would have said, "Stossel ain't worth that." But they didn't. Sometimes advertisers would pull their accounts, but still I wasn't fired. Ralph Nader once said that this would never happen except on public television. In fact the opposite is true: Unlike PBS, almost every local TV station has a consumer reporter. The reason is capitalism: More people watch stations that give honest information about their sponsors' products. So although a station might lose some advertisers, it can charge the others more. Markets protect us in unexpected ways.

Alternatives to the Nanny State

People often say to me, "That's okay for advertising. But when it comes to health and safety, we've got to have OSHA, the FDA, the CPSC" and the whole alphabet soup of regulatory agencies that have been created over the past several decades. At first glance this might seem to make sense. But by interfering with free markets, regulations almost invariably have nasty side effects. Take the FDA, which saved us from thalidomide the drug to prevent morning sickness in pregnant women that was discovered to cause birth defects. To be accurate, it wasn't so much that the FDA saved us, as that it was so slow in studying thalidomide that by the end of the approval process, the drug's awful effects were being seen in Europe. I'm glad for this. But since the thalidomide scare, the FDA has grown ten-fold in size, and I believe it now does more harm than good. If you want to get a new drug approved today, it costs about \$500 million and takes about ten years. This means that there are drugs currently in existence that would improve or even save lives, but that are being withheld from us because of a tiny chance they contain carcinogens. Some years ago, the FDA held a press conference to announce its long-awaited approval of a new beta-blocker, and predicted it would save 14,000 American lives per year. Why didn't anybody stand up at the time and say, "Excuse me, doesn't that mean you killed 14,000 people last year by not approving it?" The answer is, reporters don't think that way.

Why, in a free society, do we allow government to perform this kind of nanny-state function? A reasonable alternative would be for government to serve as an information agency. Drug companies wanting to submit their products to a ten-year process could do so. Those of us who choose to be cautious could take only FDA-approved drugs. But others, including people with

terminal illnesses, could try non-approved drugs without sneaking off to Mexico or breaking the law. As an added benefit, all of us would learn something valuable by their doing so. I'd argue further that we don't need the FDA to perform this research. As a rule, government agencies are inefficient. If we abolished the FDA, private groups like the publisher of Consumer Reports would step in and do the job better, cheaper, and faster. In any case, wouldn't that be more compatible with what America is about? Patrick Henry never said, "Give me absolute safety or give me death!"

Lawyers and Liability

If we embrace the idea of free markets, we have to accept the fact that trial lawyers have a place. Private lawsuits could be seen as a supplement to Adam Smith's invisible hand: the invisible fist. In theory they should deter bad behavior. But because of how our laws have evolved, this process has gone horribly wrong. It takes years for victims to get their money, and most of the money goes to lawyers. Additionally, the wrong people get sued. A Harvard study of medical malpractice suits found that most of those getting money don't deserve it, and that most people injured by negligence don't sue. The system is a mess. Even the cases the trial lawyers are most proud of don't really make us safer. They brag about their lawsuit over football helmets, which were thin enough that some kids were getting head injuries. But now the helmets are so thick that kids are butting each other and getting other kinds of injuries. Worst of all, they cost over \$100 each. School districts on the margin can't afford them, and as a result some are dropping their football programs. Are the kids from these schools safer playing on the streets? No.

An even clearer example concerns vaccines. Trial lawyers sued over the Diphtheria-Pertussis-Tetanus Vaccine, claiming that it wasn't as safe as it might have been. Although I suspect this case rested on junk science, I don't know what the truth is. But assuming these lawyers were right, and that they've made the DPT vaccine a little safer, are we safer? When they sued, there were twenty companies in America researching and making vaccines. Now there are four. Many got out of the business because they said, "We don't make that much on vaccines. Who needs this huge liability?" Is America better off with four vaccine makers instead of twenty? No way.

These lawsuits also disrupt the flow of information that helps free people protect themselves. For example, we ought to read labels. We should read the label on tetracycline, which says that it won't work if taken with milk. But who reads labels anymore? I sure don't. There are 21 warning labels on stepladders "Don't dance on stepladders wearing wet shoes," etc. because of the threat of liability. Drug labels are even crazier. If anyone were actually to read the two pages of fine print that come with birth control pills, they wouldn't need to take the drug. My point is that government and lawyers don't make us safer. Freedom makes us safer. It allows us to protect ourselves. Some say, "That's fine for us. We're educated. But the poor and the ignorant need government regulations to protect them." Not so. I sure don't know what makes one car run better or safer than another. Few of us are automotive engineers. But it's hard to get totally ripped off buying a car in America. The worst car you can find here is safer than the best cars produced in planned economies. In a free society, not everyone has to be an expert in order for markets to protect us. In the case of cars, we just need a few car buffs who read car magazines. Information gets around through word-of-mouth. Good companies thrive and bad ones atrophy. Freedom protects the ignorant, too.

Admittedly there are exceptions to this argument. I think we need some environmental regulation, because now and then we lack a market incentive to behave well in that area. Where is the incentive for me to keep my waste-treatment plant from contaminating your drinking water? So we need some rules, and some have done a lot of good. Our air and water are cleaner thanks to catalytic converters. But how much regulation is enough? President Clinton set a record as he left office, adding 500,000 new pages to the Federal Register a whole new spiderweb of little rules for us to obey. How big should government be? For most of America's history, when we grew the fastest, government accounted for five percent or less of GDP. The figure is now 40 percent. This is still less than Europe. But shouldn't we at least have an intelligent debate about how much

government should do? The problem is that to have such a debate, we need an informed public. And here I'm embarrassed, because people in my business are not helping that cause.

Fear-Mongering: A Risky Business

A turning point came in my career when a producer came into my office excited because he had been given a story by a trial lawyer the lazy reporter's best friend about Bic lighters spontaneously catching fire in people's pockets. These lighters, he told me, had killed four Americans in four years. By this time I'd done some homework, so I said, "Fine. I'll do the exploding lighter story after I do stories on plastic bags, which kill 40 Americans every four years, and five-gallon buckets, which kill 200 Americans (mostly children) every four years." This is a big country, with 280 million people. Bad things happen to some of them. But if we frighten all the rest about ant-sized dangers, they won't be prepared when an elephant comes along. The producer stalked off angrily and got Bob Brown to do the story. But several years later, when ABC gave me three hour-long specials a year in order to keep me, I insisted the first one be called, "Are We Scaring Ourselves to Death?" In it, I ranked some of these risks and made fun of the press for its silliness in reporting them.

Risk specialists compare risks not according to how many people they kill, but according to how many days they reduce the average life. The press goes nuts over airplane crashes, but airplane crashes have caused fewer than 200 deaths per year over the past 20 years. That's less than one day off the average life. There is no proof that toxic-waste sites like Love Canal or Times Beach have hurt anybody at all, despite widely reported claims that they cause 1,000 cases of cancer a year. (Even assuming they do, and assuming further that all these cancer victims die, that would still be less than four days off the average life.) House fires account for about 4,500 American deaths per year 18 days off the average life. And murder, which leads the news in most towns, takes about 100 days off the average life. But to bring these risks into proper perspective, we need to compare them to far greater risks like driving, which knocks 182 days off the average life. I am often asked to do scare stories about flying "The Ten Most Dangerous Airports" or "The Three Most Dangerous Airlines" and I refuse because it's morally irresponsible. When we scare people about flying, more people drive to Grandma's house, and more are killed as a result. This is statistical murder, perpetuated by regulators and the media.

Even more dramatic is the fact that Americans below the poverty line live seven to ten fewer years than the rest of us. Some of this difference is self-induced: poor people smoke and drink more. But most of it results from the fact that they can't afford some of the good things that keep the rest of us alive. They drive older cars with older tires; they can't afford the same medical care; and so on. This means that when bureaucrats get obsessed about flying or toxic-waste sites, and create new regulations and drive up the cost of living in order to reduce these risks, they shorten people's lives by making them poorer. Bangladesh has floods that kill 100,000 people. America has comparable floods and no one dies. The difference is wealth. Here we have TVs and radios to hear about floods, and cars to drive off in. Wealthier is healthier, and regulations make the country poorer. Maybe the motto of OSHA should be: "To save four, kill ten."

Largely due to the prevalence of misleading scare stories in the press, we see in society an increasing fear of innovation. Natural gas in the home kills 200 Americans a year, but we accept it because it's old. It happened before we got crazy. We accept coal, which is awful stuff, but we're terrified of nuclear power, which is probably cleaner and safer. Swimming pools kill over 1,000 Americans every year, and I think it's safe to say that the government wouldn't allow them today if they didn't already exist. What about vehicles that weigh a ton and are driven within inches of pedestrians by 16-year-olds, all while spewing noxious exhaust? Cars, I fear, would never make it off the drawing board in 2001.

What's happened to America? Why do we allow government to make decisions for us as if we were children? In a free society we should be allowed to take risks, and to learn from them. The press

carps and whines about our exposure to dangerous new things invisible chemicals, food additives, radiation, etc. But what's the result? We're living longer than ever. A century ago, most people my age were already dead. If we were better informed, we'd realize that what's behind this longevity is the spirit of enterprise, and that what gives us this spirit what makes America thrive isn't regulation. It's freedom.