SATURDAY, MARCH 23, 2024

Why Product Safety Regulations Should Be Scrapped

Consumer protection laws may be well-intended, but they have dangerous side effects.

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ECONOMICS CONSUMER CHOICE FDA REGULATION SAFETY THALIDOMIDE TRADE-OFFS VOLUNTARY CERTIFICATION

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A common objection to unfettered capitalism is that, left to their own devices, greedy industrialists would cut corners with product safety, resulting in tremendous harm to consumers. Dangerous products would flood the market, leading to a dystopia of preventable death and destruction.

Extreme hypotheticals are brought up the moment someone suggests a hands-off approach. Drugs would have life-threatening side effects, we are told, because Big Pharma would be trying to get away with minimal testing. Cars would become killing machines as companies scrap seatbelts and airbags to cut costs. And buildings would surely collapse all over the place, since companies would be using the cheapest materials available.

These fears are not merely hypothetical, either. History, we are told, is replete with examples where the laissez-faire approach was tried and led to predictably disastrous results. "Remember the thalidomide scandal?" one might say. "Remember all the traffic fatalities and building collapses?" "Do you not realize that almost all the safety regulations that exist today were created because free markets failed to 'regulate themselves'?!"

Examples of tragic accidents are submitted to the court of public opinion one after another, each of them intended to indict unregulated capitalism for the tragedy. How, in the face of all this evidence, could anyone seriously advance the long-debunked idea of laissez-faire?

Well, here's how.

The Parable of the Safety-First Standards

The first thing to understand about this discussion is that safer doesn't necessarily mean better. There are trade-offs involved with almost every safety enhancement. To illustrate this point, I like to tell a story that I call *the parable of the safety-first standards*. It goes something like this.

A local politician is concerned about road fatalities in his town. Sure, car companies have some safety standards for their vehicles, but clearly these standards aren't sufficient, because people are still dying in car crashes. "This is unacceptable," he says to himself. "Car companies shouldn't be allowed to sell death machines."

Irate at the situation, he devises a plan to solve the problem. The next day, he presents legislation requiring every car company to adopt what he calls the "safety-first" standards, the name implying that he won't settle for anything less than the highest levels of safety. The regulations go on for pages and pages detailing countless safety features that will now be required in all cars. "We already have a precedent for this in the form of mandatory seatbelts and airbags," he notes. "Why should we stop there when people are still dying?"

The car companies, of course, are not particularly happy with the new regulations, but that doesn't bother the politician. They were cutting corners on safety to make a buck, so pleasing them isn't exactly his top priority. "People over profits," he proclaims.

What he didn't expect was pushback from a different set of constituents—drivers. The drivers were mighty pleased at first, to be sure...but then they saw the price tag. "The car companies are telling us that compliant cars will cost $500,000 and up," they complain. "If these regulations are passed, 99% of us won't be able to afford to drive at all."

The politician is stumped. Here he was trying to help drivers, and now they are complaining! Don't they care about their own safety?

Understanding their concerns, however, he tables an amendment the next day which reduces some of the stringent safety requirements. Compliant cars will now only cost $450,000.

The drivers keep complaining.

"That still leaves 98% of us unable to afford to drive," they protest. "Please relax the requirements more."

Reluctantly, the politician relaxes the regulations bit by bit, and every time he does, driving becomes affordable again for more and more people. But then he faces a conundrum: where to stop? People are priced out of the market because of seatbelt and airbag requirements, too. Should those also be dropped in the name of cost saving?

Absolutely not, he reasons. "There is a certain minimum safety standard that is necessary," he says to himself. "And *my experts and I* are best positioned to evaluate what that standard should be. Anyone who is priced out of the market because of those regulations—it's for their own good!"

Lessons from the Parable

What can we learn from the parable of the safety-first standards? For one, *there is almost always a trade-off between safety and cost*. Safer products means more expensive products, with very few exceptions. Fancy braking systems in cars, more testing for drugs, better materials for buildings...all of these cost more money.

Another key takeaway is that *businesses are always making compromises regarding safety*. Every product you buy *could* be safer. You can always create something with better materials, better experts, more testing, and more features. We could have cars with extremely high-tech safety systems, drugs that have undergone thousands of trials, and buildings made of titanium. But the reason we don't make everything as safe as possible all the time is that it would be way too expensive, and people don't want that—*you* don't want that. You demonstrate this every time you buy a product that is less than the safest possible alternative.

Another thing we can see in the parable is that *safety is a difference of degree, not kind*. People often talk about products being "safe" or "dangerous" as if it's a binary. But in reality, there is just a spectrum of compromises, with high safety and high cost on one end and low safety and low cost on the other end.

"That all makes sense," you might say. "But doesn't the politician in the parable have a point? Don't we need to specify a certain minimum degree of safety to protect people?"

Well, that depends on your political philosophy. Clearly some degree of safety is important. But why should the government set one arbitrary standard for everyone? Why not let consumers make their own choices about how much safety they want to pay for, and let businesses cater to those choices?

It's important to remember that people in different circumstances will have vastly different values when it comes to safety and cost. *You* might think it's reckless to take a drug with fewer than 5,000 tests, but if someone else wants to take a drug with only 1,000 tests because it's cheaper, who are you to stop them?

The question is not whether risk and reward should be weighed. Of course they should. The question is *who* should make that judgment: the government, or the individual?

The only justification for the government making the decision is the paternalistic one. Like the politician in the parable, those who would ban "dangerous" cost-safety compromises are effectively saying, "We are taking this option away from you for your own good."

The nineteenth-century economist Frédéric Bastiat rightly scorned this haughty attitude. "If the natural tendencies of mankind are so bad that it is not safe to permit people to be free," he wrote,

"how is it that the tendencies of these organizers are always good? Do not the legislators and their appointed agents also belong to the human race? Or do they believe that they themselves are made of a finer clay than the rest of mankind?"

By imposing arbitrary safety standards on others, politicians and their supporters are effectively declaring themselves to be smarter and wiser than their fellow man. How else could they justify this blatant interference with free choice? "Apparently, then," Bastiat continues, "the legislators and the organizers have received from Heaven an intelligence and virtue that place them beyond and above mankind; if so, let them show their titles to this superiority."

The Case against Product Safety Regulations

Another problem with imposing minimum safety standards is that the "dangerous" options that are made illegal by these laws may very well represent the best cost-safety trade-off for many people, especially the less affluent. Ironically, then, the safety laws that are meant to protect consumers actually do a great deal of harm to consumers!

When cheaper options are taken away, people either have to pay an arm and a leg for their products or simply go without. The less-safe product would, in their judgment, be preferable to the expensive one. But the very product they believe would be best for their welfare is the one that—in the name of protecting their welfare—they are prohibited from purchasing.

In his book *Power and Market*, Murray Rothbard uses the example of medical licensing to illustrate how safety and quality regulations cause harm:

> It may very well be, for example, that a certain number of years' attendance at a certain type of school turns out the best quality of doctors...But by prohibiting the practice of medicine by people who do not meet these requirements, the government is injuring consumers who would buy the services of the outlawed competitors...Consumers are prevented from choosing lower-quality treatment of minor ills, in exchange for a lower price, and are also prevented from patronizing doctors who have a different theory of medicine from that sanctioned by the state-approved medical schools.

The same goes for all other arbitrary standards. When the government mandates standards for drug testing, safety features in cars, or building codes, it is taking away all the cheaper options—options that some consumers may very well have preferred if they had been allowed to take them.

Now, it's true that in the absence of safety laws some people would make compromises that seem reckless to us. For example, a fellow might commission a $1,000 house that is riddled with cheap materials, is constantly on the verge of collapsing, and is basically the definition of "not up to code."

But before rushing to criminalize this act of production, we need to consider the impact such a ban would have. Clearly, the person commissioning this house feels like it's his best option given his circumstances. Perhaps he is extremely poor, and this is all he can afford. Perhaps his only other option is being out on the street. If this is the case, how is it helping him to take away his best option? Just as banning sweatshops only hurts the poor, so too banning shoddy buildings only restricts the options of those who are down on their luck. The choice they face is between a cheap building and no building at all. Insisting on expensive safety standards guarantees they will be left with no building.

To be clear, I'm not saying every cost-safety compromise is praiseworthy. Some compromises should really not be made, even if the person making them thinks it's a good idea. But even when we disagree, there are good reasons to keep the government out of it. For one, as mentioned above, forcing our opinions on others is rather conceited. What's more, the people actually involved in any given circumstance are often much better situated to evaluate the relevant trade-offs than are government bureaucrats. One-size-fits-all systems inevitably impose the wrong decision in some contexts, even if it would be the right decision in other contexts. A $1,000 low-safety house might be a bad trade-off for someone well-off, but it could be a life-saver for someone in need.

Herbert Spencer put it well in his 1853 essay *Over-legislation*:

> The cautious thinker may reason—"If in... personal affairs, where all the conditions of the case were known to me, I have so often miscalculated, how much oftener shall I miscalculate in political affairs, where the conditions are too numerous, too widespread, too complex, too obscure to be understood... I am struck with the incompetence of my intellect to prescribe for society."

Hence, as long as the product is accurately represented—that is, as long as no fraud is committed—we need to let consumers make their own choices according to their own judgment, even if we have personal doubts about the kinds of decisions that would be allowed. Safety regulations represent the height of hubris and handcuff the very people they are supposed to be helping.

Answering the Appeal to History

Having provided this explanation, we are now ready to address the hard question. "So you would just...*let* thalidomide happen? You would allow all those precarious buildings to be built, despite *knowing* some of them might collapse?" Yes. Yes, I would. And I'd do it for the same reason I currently allow $30,000 cars to be built instead of expensive maximum-safety cars, despite acknowledging that more people will die in collisions as a result. As long as the level of risk is accurately represented, people should be allowed to make their own choices about risk, and businesses should be allowed to cater to those choices.

Unless you advocate maximum safety in everything, you acknowledge that sometimes it makes sense to take more risk in exchange for a lower price. And sometimes that leads to birth defects. Sometimes people die. And that's tragic. I'm not minimizing that for a second.

But what I'm trying to do is point out the trade-offs. We live in a dangerous world, and it is simply not practical to take maximum precautions all the time. Accidents happen as a result, but if we make policy decisions based on salient tragedies rather than clear-headed reasoning, we are only setting ourselves up for worse outcomes.

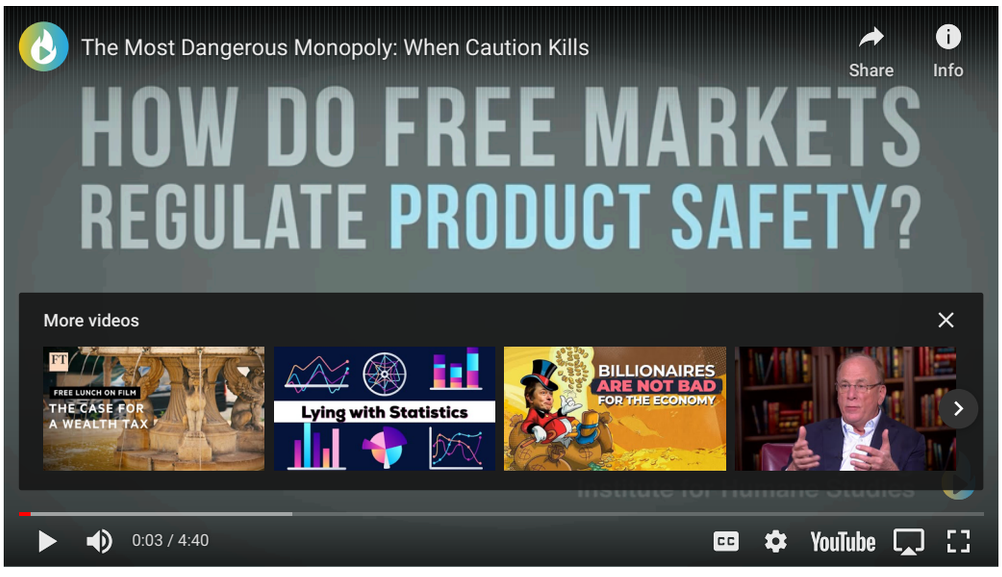
Take thalidomide. In response to that tragedy and others like it, the powers of the FDA have expanded considerably, and drugs now have to go through extremely rigorous testing before they can be sold. This creates multiple problems.

First, the resulting years-long delays in drug certification create a situation in which people are forbidden from accessing potentially life-saving drugs that already exist. What's more, the lengthy and expensive testing requirements mean many drugs simply never get developed. As the economist Daniel Klein notes, "because the FDA process is so expensive, so protracted, and so uncertain, thousands of untold drugs are never discovered or developed. It is impossible to estimate the suffering and death caused, but surely it greatly exceeds 50,000 premature deaths annually."

Considering these two impacts together, the result is that countless thousands, possibly millions, have died preventable deaths because the drugs that could have saved their lives were either delayed or never developed at all—*for their own safety*.

Finally, as with cars and houses, the drugs that comply with all the safety protocols are significantly more expensive—and thus less accessible—than they otherwise would be.

But doesn't the FDA also save lives by preventing dangerous drugs from coming to market? Not as much as you might think. In the absence of FDA regulations, Klein notes, a system of voluntary certification would easily screen out bad drugs. "Because voluntary society would accomplish anything that the FDA accomplishes," he writes, "the harms of the FDA are unredeemed."



We live in a world that is, in a very real sense, *too safe*. Many of our safety standards—such as those from the FDA—are likely *causing* far more deaths than they are preventing. And even when lives aren't on the line, our *quality* of life is often jeopardized by safety standards, such as when you can't afford a house or a car because regulations like building codes and mandatory safety features make them prohibitively expensive. And the brutal truth is that many people would rather take on a bit more risk if it meant they could afford a few more things.

It's frustrating that we live in a world of scarcity. It's frustrating that maximum safety is simply too expensive to be worth pursuing. *But we do ourselves no favors by pretending scarcity doesn't exist*. It does not help anyone to ignore the reality of trade-offs. To advance human welfare, we need to recognize that making a product safer is very often a move *away* from what's best. Because safer means more expensive, and more expensive means less accessible.

In light of this, we need to stop hurling invective at businesses that ruthlessly hunt for cheaper (and therefore riskier) ways of doing things. Instead, we should be celebrating them for their thrift! If a drug company decides to perform slightly less testing so they can offer a cheaper product, we should be grateful for that. When a builder uses a lower quality material that can still do the job—albeit with slightly more risk—we should appreciate that he is providing a more economical alternative that wouldn't otherwise be available.

Are these companies creating products that are more dangerous to consumers? You bet. But there's nothing evil or sinister about that. As long as they aren't being deceptive about what they are doing, they are only helping to expand the range of choices available to consumers. They are providing a level of safety and cost that many people believe is their best option.

And if consumers don't want products with those kinds of safety compromises, they are free to patronize someone else who offers a safer product. As a business, the only compromises you can get away with are the ones consumers are willing to go for. If you don't give the people what they want, you go out of business. This is what free marketers mean when we say the market regulates itself.

What of the accusation that the market doesn't, in fact, regulate itself? There is a bit of equivocation going on here. The market absolutely *does* regulate itself in the sense that businesses which fail to meet consumer demand go out of business very quickly. What it doesn't do is produce maximum safety all of the time.

But if you are prepared to indict the market for "failing to self-regulate" the moment there is a single death or accident, then you haven't learned the first thing about trade-offs.

Deaths and accidents, as tragic as they are, are an indication that the market is functioning well, that people are taking risks they deem appropriate. A market where cars cost $500,000 and there are zero traffic fatalities is a poorly functioning market. The optimal number of traffic deaths, at least according to the purchasing decisions of drivers, is not zero. So forcing a state of affairs with zero deaths is regulating the market, not because it couldn't or didn't regulate itself, but because it *did* regulate itself and you just didn't like the outcome.

What a World without Safety Regulations Would Look Like

Though many predict dystopia in the absence of safety regulations, these fears are completely unfounded. With only rare exceptions, consumers will not settle for extremely risky products. We are far richer than we were decades ago, which means we can afford—and will demand—far more safety.

A world without safety regulations will not be a world full of deadly side-effects from drugs and collapsing buildings. For the most part, it will mean buildings with safety factors of 2.5 instead of 3. It will be a world where silly requirements about railings and supports will be discarded. People in the industry already know these things are over-the-top. They make their products up to code because they are forced to, not because they believe the extra cost is always worth it.

What would stop builders from reducing safety even further? A few things. For honest builders, consumer demand for safety will force them to keep their safety standards up to a certain level, lest they go out of business. Meanwhile, builders trying to engage in fraud—pretending to have higher safety standards than they really have—will find such a scheme pretty much impossible to pull off. Consumers will demand third-party certification from building inspectors before they agree to buy a building, just as they currently do for all sorts of products and devices (Underwriters Laboratories is a common example). Buildings that have not been verified by a reputable certification agency will have no market.

Finally, if a more libertarian legal framework were implemented, any accidents that do occur would likely be punished much more harshly than they are today, creating a strong deterrence for shoddy work. Rothbard thus comments in *Power and Market*:

> The free-market method of dealing, say, with the collapse of a building killing several persons, is to send the owner of the building to jail for manslaughter. But the free market can countenance no arbitrary "safety" code promulgated in advance of any crime. The current system does *not* treat the building owner as a virtual murderer should a collapse occur; instead, he merely pays a sum of monetary damages. In that way, invasion of person goes relatively unpunished and undeterred.

Similar changes would likely happen with pharmaceuticals. Drugs might undergo a fraction of the testing they currently receive, but they would still be quite safe, and a system of third-party certifiers would arm doctors, pharmacists, and consumers with reliable information about safety and efficacy.

Cars, likewise, would still be reasonably safe. There might be some less-safe options on the market that aren't currently allowed, but it's not like consumers will all become daredevils overnight. If you want a safer car, you will almost certainly have the option to pay a premium for it, just like you do now. The market provides, as we like to say.

Accompanying these laudable and overdue reductions in safety would be significantly lower prices. Not only that, but drugs would be developed far faster, and there would be many more of them because drug development would be far more economically feasible.

Would the world be safer overall without safety regulations? I'm inclined to say yes, simply because the benefits of removing the shackles from product development are so huge, especially when it comes to pharmaceuticals. But it's certainly possible that some areas may see more deaths and accidents on the margin than before as people take advantage of the freedom to take more risks.

For these areas, it may seem obvious that pulling back safety regulations is a step in the wrong direction. But this comes back to the paternalism point. Do we really want to live in a world where the government prevents people from making their own choices, purely "for their own good?" Is a longer average life expectancy really such a lofty end that it's worth trampling people's freedom to achieve it? And if it is, why not prohibit skydiving? Why not regulate people's diets? As Ludwig von Mises perceptively wrote:

> Once the principle is admitted that it is the duty of government to protect the individual against his own foolishness, no serious objections can be advanced against further encroachments. A good case could be made out in favor of the prohibition of alcohol and nicotine. And why limit the government's benevolent providence to the protection of the individual's body only? Is not the harm a man can inflict on his mind and soul even more disastrous than any bodily evils? Why not prevent him from reading bad books and seeing bad plays, from looking at bad paintings and statues and from hearing bad music? The mischief done by bad ideologies, surely, is much more pernicious, both for the individual and for the whole society, than that done by narcotic drugs.

The Real Dystopia

While a world without regulations is nothing to fear, the same cannot be said for a world *with* regulations. In fact, I'd like to suggest that what we really ought to be concerned about is the dystopia of sorts we are living in right now.

We live in a world where emotionally-driven safety regulations have created all kinds of barriers to product development and affordability, barriers that have cost countless lives, created tremendous unnecessary trials, and restricted our freedom to command our own lives. Everyone is so concerned about avoiding the dystopia they think would result from a world without regulations that they have overlooked the dystopia that currently exists *as a result of* regulations.

It is a very silent dystopia, to be sure. You won't hear about it on the news. It's not mentioned in political campaigns. But it is no less real.

People are out on the streets because the houses they would actually be able to afford are illegal to build. People are struggling to get around town because government safety regulations have priced them out of the car market. People are dying in hospitals, *by the thousands*, because the drugs that could be saving their lives are illegal to produce quickly and cost-effectively.

And quite frankly, people are being denied the right to take risks with their lives just for the sake of it. We are being coddled, put in regulatory straight jackets "for our own good." We are being treated like cattle, cared for by an overbearing rancher whose only goal seems to be keeping us alive so we can make as many revolutions around the sun as possible.

That, too, is dystopian.

To escape this tragic world of needless death, destitution, and destruction of the human spirit, it is high time we reconsidered the premature condemnation of free markets.

Laissez-faire is not the path to dystopia. It's the path out of it.

Additional Reading:

Caveat Emptor: The Consumer's Badge of Authority by Bertel Sparks

Why the FDA's Monopoly Over Drug and Food Approval Needs to End by Walter Block

Economists Against the FDA by Daniel B. Klein

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