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Death by Government Protection

by Sheldon Richman • December 2000 • Vol. 50/Issue 12

Purely for the sake of discussion, let's assume the worst about Firestone and Ford: that gross negligence led to the production of tires that killed and injured people riding in Ford Explorers. What does this add to the debate between capitalism and the regulatory state?

Crusaders for government regulation think it adds a great deal. "Consumer advocates" and pundits almost gleefully proclaim that the Firestone/Ford case demonstrates that the deregulation movement is wrong. If reminded that the case occurred in a regulatory regime that includes the National Highway Traffic Safety Administration (NHTSA), the regulationists reply that the agency was gutted in the alleged anti-government 1980s, its budget 30 percent lower today than it was in 1980.

The implication of course is that a beefed-up NHSTA would have prevented the purveying of lethal tires. Is there anything to this?

Before taking up this question, some general observations are in order. The preference for the self-regulating market over a government-regulated market does not hinge on any belief that businessmen are more virtuous than anyone else. That would be naïve indeed.

The case for capitalism, rather, begins with the premise that people ought to be free to pursue their happiness unmolested by others. Thus advocates of capitalism need harbor no unconditional love for anyone who calls himself a businessman. People have free will. They are capable of choosing to do bad thingsor to be so unmindful of the consequences of their actions that they harm others. The social system called capitalism, the essence of which is private property, does not promise to rid the world of such people. That would be utopian. Instead, it assures that its defining features perforce discourage such conduct. It further provides the grounds and procedures for restitution when it does occur. That is the best we can hope to achieve. No competing system can deliver more; indeed, any alternative would deliver a good deal less and worse.

What generally keeps businesspeople from making products that are unreasonably dangerous?* The desire to stay in business would seem to be a strong incentive to avoid endangering one's customers. The classic fly-by-night con man of course does not intend to stay in business. But a fly-by-nighter lacks a reputation, and that in itself limits the damage he can do. On the other hand, the company that intends to be in business a long time has much to lose by making products the reasonable use of which harms or kills customers. Consumers put companies out of business for much less serious offenses. Actual and potential competition assures that consumers will have alternatives to products about which they have doubts. Because shareholders understand this, Firestone's stock hit an eight-year low in mid-September. Its existence is seriously in doubt.

* I phrase it that way because, as Dwight Lee has been pointing out in this magazine, in a world of scarcity, perfect safety, even if it could be achieved, would require tradeoffs that consumers would find unacceptable.

Consumer retribution in the marketplace, moreover, is only part of the story. The law of torts stands as a warning that negligence and recklessness will have serious consequences for a company.

This leads us to wonder what happened inside Firestone or Ford. At this writing, we simply don't know. What we do know is that a private company with a stake in

automotive safety, State Farm Insurance, alerted the government two years ago and nothing happened. The fact that Firestone and Ford did not act as the theory of markets says people will *tend* to act does not invalidate the theory. We use thousands of products every day. Serious, not to mention catastrophic, malfunctions are the exception. Recalls make news because they are rare. And businessmen now have a new lesson in Firestone and Ford. If they didn't know it before, they know it now: unreasonably dangerous products are bad business.

Government as Protector

As Thomas Sowell says, in our world there are no solutions, only tradeoffs. Keep that in mind as we consider the state alternative to market-based consumer protection. Advocates of government regulation assume it is costless: not that there are no money expenses, but that nothing important is traded away when the state displaces the market as the protector of consumers. Yet economists over the last 40 years have documented the costs of government protection. Most dramatic is the literature about the Food and Drug Administration. We now know that government protection kills by delaying the availability of life-saving drugs. Further, thanks to economists of the Public Choice school, we know that bureaucrats, despite the best intentions, confront incentives that are adverse to the interests of consumers. An FDA official who delays a valuable drug because any post-approval mishap would bring him bad publicity is not serving the "public interest." (See Daniel Klein, "Economists Against the FDA," *Ideas on Liberty*, September 2000.)

What is true for the FDA is true for the NHTSA, the agency whose airbag and fuel-efficiency mandates and obfuscation have demonstrably cost lives. This agency's advocates want a bigger budget, more personnel, tougher standards, and more authority to recall tires. But those things are not costless. As Robert Levy of the Cato Institute points out, NHTSA bureaucrats would have an incentive to prematurely recall tires: if they don't recall them and someone dies (for whatever reason) in a car equipped with them, they'll have congressmen and reporters breathing down their necks. But if they recall the tires, no one would ever know if anyone *would* have been killed had the recall not occurred. Face it: there is no perfectly safe tire.

Another cost of a more active bureaucracy would be the inevitable delays and added expense of new tire technologies that didn't meet the government's standards. Just as the FDA keeps life-saving medicines off the market for long periods (even when they are being used successfully in Europe), the NHTSA could keep revolutionary tires off the road. They might have saved lives, but no one would know and no bureaucrat would be held responsible.

The promise of government protection carries an even greater cost: *the consumer vigilance forgone owing to the false sense of security the promise of government protection induces.* The government cannot actually deliver on that promise—medical licensing has not eliminated quacks—but it's the promise that counts. Since people generally believe the government looks out for them, they develop an unarticulated frame of mind summed up by the words: "they couldn't sell that if it was dangerous." A false sense of security is worse than no security at all. It sets people up to be victimized.

If the government stopped regulating—and everyone knew it—the buying public's vigilance would grow. People would seek out information. Entrepreneurs would respond. Insurance companies would assume a larger role. Private consumer advocacy would expand. Lives would be saved.

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