

# Policy Dialogue

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## Of Markets, Government, Lawyers, and Freedom

*ABC News correspondent John Stossel delivered the keynote address at Pioneer Institute's 2001 Better Government Competition Awards Dinner. Best known for his "Give Me a Break" segment on the ABC news magazine program "20/20," Stossel also produces prime-time specials; one of his most recent was a consumer report on government. The Dallas Morning News has called Stossel, the winner of 19 Emmy Awards, "the most consistently thought-provoking TV reporter of our time." Excerpts of his remarks are printed below.*

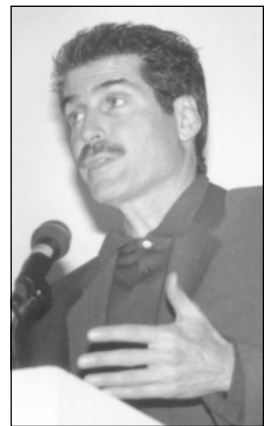
### Effects of Government Regulation of the Marketplace

I started as a consumer reporter 30 years ago, giving myriad examples of people being ripped off. I approached reporting the way most young reporters do, which is that consumers are basically victims and need a lot of government intervention and regulations—and a lot of lawyers suing—to protect them.

Intuitively this makes sense—and made sense to me for years until I really watched the regulators work. They cost consumers vast amounts of money—the least of it is what we spend in taxes to pay the bureaucrats. The big cost is the indirect costs—all the money and energy that creative people spend trying to obey the rules, jumping through regulatory hoops, lobbying politicians, and forming trade associations just to try to manipulate the leviathans that have grown in state capitals and Washington, D.C. It smothers economic growth.

I'd also argue that it kills the spirit. I went to Moscow before the fall of communism and saw that dead-eyed look that people had—it's a look you get when you live in an all-bureaucratic state. I bet you see the same thing at the state licensing boards.

What really convinced me that regulation wasn't working is that it didn't even work on the obvious crooks—people selling breast enlargers or burn-fat-while-you-sleep pills. They kept getting away with it. Maybe five years down the road the attorneys general would go after them; five years later the suit would be approaching court, but the sellers would just change the name of the product or move to a different state.



*ABC News' John Stossel addressing attendees of the 2001 Better Government Competition Awards Dinner.*

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They got away with it. The people who had to pay for it were all of us, the customers of the good companies.

The more I watched markets work, the more impressed I became by how flexible, reasonable, and cheap they are at solving problems compared to clumsy government-imposed solutions. What's really astonishing is that markets protect us even in areas where intuitively we wouldn't think market forces would be effective.

For example, look at the greedy, profit-driven TV networks that have employed me. They get all their revenue from advertisers. Yet, they employed me as a consumer reporter to bite the hand that fed them. When consumer reporting began, Ralph Nader said this would never happen. He said you'll see consumer reporting on public television, but never on commercial stations because they won't want to offend their sponsors. But what's the truth today? The truth, as is so often the case with what Nader says, is the opposite. There's no consumer reporting on PBS because the timid bureaucrats who run it are too nervous about offending anybody. But there are consumer reporters—sometimes annoying ones—on most commercial TV stations.

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Why did this happen? Because markets work in unexpected ways. What the networks discovered is that more people would watch a news program that gave honest information about sponsors' products. Yes, they'd lose some advertising, but they'd get a bigger audience and could charge the remaining advertisers more. They made more money. If you have an open society, markets protect you in unexpected ways.

### A Closer Look

Normally when I try to sell this idea, people say fine, for trivial issues like that, maybe the market will protect us. But when it comes to the important stuff—our health, whether we're safe, whether we live or die—then you've got to have government to protect us. You need OSHA to protect the workers, the FDA, the DEA, the CPSC—the whole alphabet soup of agencies that we have.

Again, intuitively this sounds reasonable. Institute a rule to protect us from danger. But, after watching those rules, I have to ask, do they really make us safer? No, I think they make us less safe. Because all the regulations, by interfering with the natural wishes of millions of free people, have always created nasty, unexpected side effects which make life worse.

Look at the drug laws. I'm glad that heroin and cocaine are illegal. Maybe that will deter my 16-year-old daughter, but I don't know that it will. We're certainly not keeping the stuff out of the country with these laws. So I'm not sure what the law accomplishes. I'm sure it deters some people, but a certain percentage of Americans will abuse intoxicants regardless of what the law is.

I do know what the unintended consequences of the law are; there are four horrible things. First, there's the drug crime; almost nobody goes and gets high and commits crimes because they're high. The crime is caused by the law. Because it's illegal, the sellers have to enter the black market. They have to arm themselves because they can't rely on police to protect their property. And the buyers steal to pay the higher prices, or steal to get the drugs. Nicotine is about as addictive as heroine, yet no one is knocking over 7-11s to get Marlboros.



Stossel's remarks are also available in audio format on Pioneer's website at [www.pioneerinstitute.org/pioneeraudio/mp3/stossel.mp3](http://www.pioneerinstitute.org/pioneeraudio/mp3/stossel.mp3)

Second, we're corrupting police forces. We're asking cops who make maybe \$30,000 a year to turn down \$30,000 bribes. Not all do.

Third, we're telling kids in poor neighborhoods that entry-level jobs are for suckers. Why work at McDonald's for minimum wage when your little brother can make more as a drug lookout? And the role models—the coolest people in the neighborhood, the ones with the best cars and the best clothes—are the criminals.



WBZ Radio talk show host David Brudnoy (left) and Pioneer board member Peter Nessen with Stossel prior to his address.

Finally, we're creating unbelievably rich criminal gangs. We forget that Al Capone was created by alcohol prohibition. The gangs created by drug prohibition are even richer; they soon may be able to buy nuclear weapons. This money is going to fund terrorists.

So why are we doing this? To protect us from ourselves. But if that's a good thing to do in a free society, where does it stop?

### The Food and Drug Administration as Protector

Let's take a look at *legal* drugs. The FDA protects us from "snake oil sellers" marketing a bad drug. Again, intuitively, I'm glad that the FDA protected us from thalidomide, an anti-morning sickness drug that women took during pregnancy but caused many of them to give birth to children with severe birth defects. Mostly this occurred in Europe, because in America the FDA protected us. It wasn't that they were so smart; they were just slow. By the time thalidomide was nearing the end of its approval process here, the ill effects were being seen in Europe.

Since then the FDA has grown tenfold in size. To get a new drug approved takes about 12-15 years and costs about \$500 million. While I'm glad they protected us from thalidomide, I have to ask, is it worth it? I don't think so anymore. Because what we don't think about is that in protecting us from the bad stuff, they protect us from good stuff, too.

Right now in this 15-year pipeline there are new fat substitutes that can keep people from getting obese. They're in that pipeline because there's a tiny chance that there's some carcinogen in them that would hurt us, so the FDA wants to make sure. But every year in America 5,000 people die from obesity. Some of those people would be saved by this new fat substitute. Don't they count in the equation? No, they don't because we don't know who would be saved by innovation.

Some years ago the FDA held a news conference and proudly announced, "This new beta blocker we're approving will save 14,000 American lives a year." How come no one stood up at the press conference and said, "Excuse me, didn't that mean you killed 14,000 people last year?" It did mean that. But reporters don't think that way.

What's the alternative? It sounds scary not to have an FDA to protect us from bad stuff. But in a free society, why do you need a police agency that says, "No, you may not." Couldn't it be an information agency? Those companies that wanted to submit their drugs to the \$500 million approval process would do so, and those of us who are cautious would only take those drugs. But if you were dying, you could try something without having to break your country's laws to get it. By trying something, we would learn things that would save other lives later.

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I'd argue further that you don't even need the FDA to be the information agency because government agencies, despite all the best efforts, don't do things very well. If you abolish them, I think you'd see private groups like *Consumer Reports* or Underwriters Laboratories that would spring up and do the same job quicker, better, and cheaper.

In any case, isn't it more compatible with what America is supposed to be about? Patrick Henry didn't say, "Give me absolute safety or give me death." It's supposed to be about liberty.

### The Legal Profession: Help or Hindrance?

Let's go on to the other layer of safety protection in America—trial lawyers. As a devotee of free markets, I should like trial lawyers, because they're a free market solution. Instead of clumsy government regulation, they protect us with the private lawsuit. They're a substitute to Adam Smith's "invisible hand"—they're the "invisible fist:" behave badly and they'll come and punish you.

In theory, this should be a good thing; in practice, it's horrible. Because most of the money doesn't go to the victims and it takes 10, 15, or 20 years for the victims to get their money. If you add together the plaintiff's lawyers 30-40 percent, the defense lawyer costs, and the court costs, most of the money goes to the process. It's crazy.

Worse, lawyers don't make us safer because they attack the people we need most—the hospitals, the drug makers, the paramedics. Some years ago they sued the vaccine makers claiming the vaccines were not as safe as they could have been. I don't know what the truth is, but let's assume they were right and they made the vaccines a little safer. Was it worth it? I don't think so, because when they sued 20 companies were researching and making vaccines in America. Now there are four.

At a time of bioterrorism, wouldn't it be better to have 20 vaccine makers? Many got out of the business because they said, "Who needs this liability? Let's stick to our shampoo or skin care business. We don't make that much off vaccines that we need to take this kind of hit."

Finally, lawyers interfere with the information flow that in an open society helps us keep ourselves alive. Who reads warning labels anymore? Tiny fine print, both sides of the page, simply to ward off the lawyers. There are 21 on a step ladder: don't dance on it wearing wet shoes, or something. This doesn't make us safer.

My point is that freedom will protect us better than government or lawyers. When I argue this people say, "Well, maybe that might work for us, but what about the poor and the ignorant. You've got to have this regulation to protect them. They're not going to make such good informed decisions as we will."

But here, too, the markets work in miraculous ways, because freedom protects the ignorant. For example, look at cars. I sure don't know what makes one run better than another or safer than another; I assume you don't either. But, it's hard to get totally ripped off buying a car in America. In an open society not everybody has to be an expert for the market to work. You just need a few car buffs—a few people who read the car magazines. And through word of mouth, the good news spreads. The good companies thrive, the bad ones atrophy. Freedom protects the ignorant, too.

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## The Proper Role for Government

Markets won't take care of everything; we do need government, the rule of law, and especially environmental regulation, because often there's no market incentive to behave well—thank God we've had catalytic converters put on cars and water pollution regulation, because the air and water is cleaner than it used to be. We need government if we're going to wage war against terrorism.

But how much government do we need? For our first 150 years when America grew most, government was five percent or less of gross domestic product. What's the right size for government? Is it five percent, ten, or twelve? Right now it's approaching 40 percent. Today, government runs trains, subways, parks, public housing, a war on drugs, a welfare state; it subsidizes students, farmers, Indians, researchers, volunteers, small businessmen, rich businessmen. Maybe if it weren't doing all that stuff badly, it could focus on what it ought to do, which is protect our freedom and protect us from criminals and terrorists. We ought to have good government—better government, as the Pioneer Institute tries to create. But then government would have to do less and focus on what it ought to do.

Of course, you then would want a press that was putting the right emphasis on news—you'd want the public to have good information. But I'm embarrassed by the job my business is doing. Because we don't give you good information. Here the market works against us. We have an incentive to scare you. More of you are going to watch "20/20" if I say, "Tonight on '20/20,' apples will kill you" than if I say that they won't. We tend to scare you, proclaiming, "This is going to get you. That's going to get you."

Something is off in the public debate today because all you hear from people in my business is whining about risks. One result of our not putting things in perspective is that we make Americans fear the future and innovation. But we learn through the process of allowing free people to engage in risky behavior. What we learn saves other lives later.

It's true, we are exposed to lots of things humans have never been exposed to before: food additives, invisible chemicals, radiation—scary stuff. But what's the result?

We're living longer than ever. Our sense of history is so bad we forget that at the turn of the century, during the last century, most people my age were already dead. What has increased lifespans almost 30 years is the very technology we now fear so much. What gave us that is not government or lawyers; it's freedom.



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