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The Intergenerational Invisible Hand: A Comment on Sartorius's "Government Regulation and Intergenerational Justice"

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Introduction

In "Government Regulation and Intergenerational Justice," Rolf Sartorius argues that some government regulation is justified in order to protect the rights of the unborn.¹ More than half of his paper is a discussion of the theory that views the only justifiable function of government as the "umpirage of the law of nature." In the remainder of his paper, he argues for an extension of the theory in order to justify regulation as well as umpirage. In particular, he argues that protecting the rights of the unborn represents an especially strong case where government regulation is justified.

Sartorius's central argument is that everyone has a right to certain basic goods that are the prerequisites of leading a human life. Some of these goods are "public goods," the future provision of which is not assured in a free market regime. Since future generations have rights to these public goods, it is the duty of the current generation, through government regulation, to protect them.

Sartorius's position has a Rawlsian flavor to it,² which is not surprising until it is remembered that he claims his position to be a natural extension of standard libertarian theory. The paradox is only an apparent one, however, because Sartorius believes that the classical libertarian theorist John Locke was a closet Rawlsian. According to Sartorius (p. 184), a variant of the Rawlsian difference principle (that inequality is justified only if the position of the worst off is thereby improved) lies at the root of Locke's justification of initial property acquisition (the so-called Lockean Proviso). That is, when a certain quality of land is scarce, its initial acquisition can be justified only if those who do *not* acquire the land are made better off.

It would be easy to dispute Sartorius's introduction of the Rawlsian difference principle into libertarian theory. For instance, many libertarians argue that Locke was wrong to think that before there was private property, property was held in common. These libertarians believe that if someone acquires something that was previously unowned, no one is thereby "barred," even if there is not enough left for everyone else. Even the libertarian who believes that property was first held in common need not accept the difference principle. He might ask why the worst-off person is the one who must be made better off. Why not require that the average person be made better off or, through some chance device, that everyone have the *opportunity* to be made *much* better off? Plausible arguments can be made for each of these proposals, but I will not make them here.

In order to move on to issues that are either more interesting or easier to resolve, I will accept the introduction of the difference principle into libertarian theory and will focus on two other claims that are central to Sartorius's argument: The first is the claim that the unborn have rights; the second is the claim that under an unregulated system, important public goods would be disastrously depleted.

On the first issue, I deny Sartorius's briefly asserted claim that it is proper to attribute rights to the unborn. The problem is that attributing rights to the unborn is inconsistent with the view that the source of rights is the autonomy of the individual human being. A necessary condition for the exercise of any rights is that the agent exist. The never-existent cannot have rights. So if the unborn has any right, it has the right to be born. But then it follows that potential parents do not have the right to interfere with the birth of the unborn. Contraception would be immoral, and abortion even more strongly so. Such a view of the rights of the unborn might be defensible, perhaps from a religious perspective. But surely it is not consistent with the view, partially endorsed by Sartorius (p. 180), that the source of rights is the capacity of adults to lead autonomous lives.

The unborn do have a right to basic goods once they are born, but the claims are against their parents, not against society. Even if Sartorius is right about the difference principle, still the principle applies only to the first generation. In that generation when property is acquired, everyone has a claim to basic goods. If, afterwards, some dissipate what they have, whether through laziness, risk-taking or some other choice, then they have no claim on the rest of society. If the dissipated choose to have children, then it is the parents who have an obligation to provide the children with the basic goods. In such cases other people might wish to offer help, but the government has no right to intervene.

Even if Sartorius is correct about the rights of the unborn, to justify regulation he still needs to claim that in an unregulated society there would be a disastrous depletion of basic goods. I propose now to examine this latter claim.

Sartorius defines public goods in terms of externalities. He does not claim that the unborn have a right to all the advantages that we have—for instance he denies that the unborn have a right to the wilderness areas we now enjoy. Instead, he

limits the claims of the unborn to basic goods which understandably go unlisted but which must presumably be those items that are the necessary conditions for an autonomous life. So it is clear that for Sartorius it takes more than some alleged inefficiency to justify regulation. In the paradigmatic public goods case of "overgrazing," for example, the fact that the commons support a few less cattle than the land might support under another system is not enough.³ It would have to be shown that the "overgrazing" deprives future generations of basic goods.

The cases where regulation would be justified according to Sartorius (p. 193) are those where there is a threshold beyond which the public good will be destroyed. Sartorius uses as an example a situation in which people hunt a particular animal in such numbers that the species is reduced to the point where it can no longer reproduce itself. The scenario sounds plausible because there are species that have become extinct in just this way. I remember my great-grandmother telling me how the skies in Southern Indiana used to be filled with passenger pigeons, and I also remember her telling me how good passenger pigeon pie tasted. In all actual cases, however, it should be observed that the extinct species was not a basic good. People were able to lead meaningful lives after the passing of the passenger pigeon, just as they would be able to lead meaningful lives if the snail darter were to become extinct. The soundness of Sartorius's argument, then, depends not on whether a species has ever become extinct, but rather on whether under a market system a disaster threshold would ever be passed for something that was really a basic good.

My answer is a strong *no*—the disaster threshold would never be reached under an unregulated free market system.

The main area of Sartorius's concern appears to be the environment. Those who predict environmental disaster commit the common fallacy of prediction by extrapolation. In some situations extrapolation is the best we can do, but in others, and fortunately this is one of them, economics has provided us with better tools of analysis.

My argument is relatively simple. As some limited good is consumed, the price rises. As the price rises, consumption declines, production of substitutes increases, conservation (or "hoarding") of the good increases, and research into new technology increases. Thus, disaster is always averted through the incentives provided by the price mechanism.

The immediate response to my argument might be that it is irrelevant to Sartorius's position, since he is considering just those cases where the goods are not privately owned and hence where the incentives of the price system cannot operate. Such a response would be mistaken, for the same sort of argument can be applied in the Sartorius case of a public good that is also a basic good. If the public good has no adequate substitutes (as must be the case in the depletion of a good properly called "basic"), the value of the remaining units of the good would rapidly increase. At some point, the benefit of preserving the remaining

supply would exceed the costs of instituting private property in the good. In the language of economists, it would then pay to internalize the externalities. Once the good had become privately owned, the price mechanism would operate to assure that the disaster threshold would never be reached.

The theory of the evolution of property rights that I employ is not novel. It has been persuasively argued for by Harold Demsetz in his classic article on the economics of property.⁴ There he gives the specific example of the Indian tribe that used to hunt beaver without having any sort of individual territories. When the white man came, the demand for beaver pelts increased the value of beavers and led to a depletion of the supply. This in turn led to the assignment of particular areas to particular Indians, thus providing the incentive for beaver conservation.

In modern times, the depletion of a basic good could be dealt with either by extensions of common law property conceptions through the courts, or through explicit legislation.

Sartorius does briefly consider the possibility that public goods might be made private. He dismisses the possibility on the basis of one counterexample. His case is one where a migratory herd ranges over land held in common by a group of people. The herd becomes depleted, so the land is divided into private parcels. But since the herd migrated, it still is in the interests of each individual to kill as many animals as he can. So the disaster threshold is reached even though there is private property.

The problem with Sartorius's counterexample is that he has not really allowed the public good to be privately owned. The *land* has been made private, but the *animals* are still public goods. If property rights in the *animals* had been assigned, then the owner could either fence them in and provide them with food and shelter during the period when they would have migrated, or he could let them migrate and purchase easements over the property through which his animals will pass. In either case, there is no reason to believe the threshold limit would be reached (assuming, as before, that the animals were a basic good).

So far, I have presented a general argument for how the market will avoid disaster, and I have also pointed out why Sartorius's counterexample is no counterexample at all. My case, however, would be stronger if I had been a bit more specific in saying how the free market would handle specific disasters that bother environmentalists.

Predicting the future is always difficult, but it is possible to suggest the general long-run features of an unregulated free enterprise world. First, there would be stable population. As income rises in developing nations, parents eventually have smaller families. As Becker's theory of the family puts it, with rising income, parents invest more in quality and less in quantity of children.⁵ Second, there would be inexhaustible sources of energy. Fusion power is expected to be feasible by the turn of the century. The fuel source of a fusion reactor is water. Finally,

as exhaustible resources are used, their price would rise. The higher prices would, first, cause substitution in consumption toward products that do not use these resources; second, cause substitution in production toward renewable factors of production; third, make recycling more profitable; and finally, provide the incentive for technological advance.

Environmentalists today see a market failure to provide for future energy needs, just as past extrapolators saw failure in the exhaustion of whale oil for lighting and of large Canadian trees for the masts of the British fleet.⁶ The environmentalists should not be ridiculed too severely for seeing market failure where there is none. Their arguments are plausible on a common-sense level as are *most* arguments of market failure.

The invisible hand is often very difficult to see. Even those who generally defend the market have their favorite "market failures." One of Robert Nozick's is discussed in *Anarchy, State, and Utopia*.⁷ There, in a footnote (p. 315), Nozick claims that if people were able, as they may soon be, to easily select the sex of their child, they would overwhelmingly choose to have boys. The resulting imbalance would have disastrous consequences for future generations. One remedy, according to Nozick, would be to have the government require hospitals to maintain a one-to-one ratio. In reluctantly mentioning such a remedy, Nozick was unaware of a survey reported in the journal *Science*.⁸ Just as Nozick would predict, the survey showed that if couples were free to choose, they would overwhelmingly prefer their first child to be male. But, and here is the surprise, they would just as overwhelmingly want their second child to be female. When additional children are taken into account, the resulting sex ratio in society is one-to-one. In addition, allowing choice of sex would have the benefit of making it easier to find an appropriate mate. A male would be more likely to have a younger sister whose friends are of the right age for marriage, and likewise a female would be more likely have an older brother whose friends are of the right age. Thus if couples are allowed freely to choose the sex of their children, future generations will be benefited "as if by an invisible hand."

The moral of the story is that when the invisible hand is finally seen clearly, it may not be as arthritic as Sartorius believes.

Notes

1. Rolf Sartorius, "Government Regulation and Intergenerational Justice," in Tibor R. Machan and M. Bruce Johnson, eds., *Rights and Regulation* (Cambridge, Mass.: Ballinger, 1983).
2. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
3. Garrett Hardin, "The Tragedy of the Commons," *Science* 162 (December 13, 1968):1243-48.
4. Harold Demsetz, "Toward a Theory of Property Rights," *American Economic Review* 57 (May 1967):347-59.
5. Gary S. Becker and H. Gregg Lewis, "Interaction between Quantity and Quality of Children," in Theodore W. Schultz, ed., *Economics of the Family* (Chicago: The University of Chicago Press, 1974), pp. 81-90. See also Julian L. Simon, *The Economics of Population Growth* (Princeton, N.J.: Princeton University Press, 1977).

6. For some additional examples, see Douglas C. North and Roger LeRoy Miller, "The Economics of Energy," in *The Economics of Public Issues*, 6th ed. (New York: Harper & Row, 1983).
7. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
8. Charles F. Westoff and Ronald R. Rindfuss, "Sex Preselection in the United States: Some Implications," *Science* 184 (May 10, 1974):633-36.