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“Regulation Man and the Invisible Victims”

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This essay is based on a paper Dr. Pirie presented at the Center for Constructive Alternatives seminar, "Alphabet Soup: The Regulatory Agencies."

The visit of Mr. Ralph Nader to the campus of Hillsdale College exposed the students to a close-up view of the new species: Regulation Man. Among the characteristics of the breed which could be observed by this fascinating glimpse, the one most singled out by the students was the apparent belief by Regulation Man that anyone who opposes his methods must also be opposed to what he says are his intentions.

This was a shrewd observation on the part of the students. I myself hold the remarkable view that it is possible to be in favor of protecting "life, health and property," as Mr. Nader put it, without being in favor of the detailed minutiae of bureaucratic regulation which claim to pursue the same goals. I even note, in passing, that it used to be traditional to add "liberty" to that list, and will make good Mr. Nader's oversight by restoring it as one of the things worth working for.

In contrast to my view, Mr. Nader clearly believes that if you oppose the Environmental Protection Agency, you are in favor of dirty water and polluted air; that if you oppose the

Federal Drug Administration, you are in favor of people dying of cancer; and if you oppose the federal safety regulations, you are in favor of having children decapitated in automobile accidents. I noted that when Dr. Tibor Machan questioned the efficacy of air pollution controls, Mr. Nader's instant response was to ask, "Have you ever seen anyone dying of emphysema?"

In logic this is called the fallacy of denying the antecedent; and in ordinary parlance it is the fallacy of supposing that there is only one way of killing a cat. The point which is denied by Regulation Man, both by implication and by emphasis, is that it is possible to be against dirty water, against polluted air, against people dying of cancer and against children being decapitated in automobile accidents, while at the same time being against the regulatory agencies which were allegedly designed to prevent these things.

The arguments of Regulation Man, although fallacious, are undoubtedly powerful because they point to visible victims. We can all see the victims, lying headless in automobile accidents or gasping for life and breath in hospital beds. They are visible to all of us, and are especially visible to the media. How easy it is to be carried away by an emotional reaction of horror at the atrocities, committing the further fallacy of *argumentum ad misericordiam* instead of making a reasoned assessment of the alternatives.

Any sensible account of the situation recognizes that there are victims of regulation as well as victims of non-regulation. There are social costs of regulation which lack the emotional impact of visible victims, but costs which should nonetheless be taken into account when the benefits are assessed. The sad fact about the victims of regulation is that they are not readily apparent either to us or to the media. Very often they are the nameless and numberless multitudes who present neither names nor faces before the television cameras. We do not know who they are. They present themselves not as the visible causes of our emotional concern, but only as the objects of our intellectual consideration.

Those who suffer the adverse consequences of regulation are the invisible victims of our society: we do not take them into account because we do not see them. We can all see the one man in 200 million who is dying because of the new drug. We can even, with the television cameras, attend his funeral and watch his sorrowful widow testify before a Senate subcommittee. None of us can see the hundred thousand people whose early death might have been prevented by the new drug. They do not testify.

The other aspect of this invisibility is a lack of self-identification. While those who gain from regulation recognize themselves as beneficiaries and are able to organize themselves into interest groups presenting information and pressure at the political level, those who suffer from regulation often do not realize they are victims of it. They are unaware of what they might have gained had there been no regulation to prevent them. Unable, because of this, to present the organized pressure of an interest group, they are often simply "the poor," "the unemployed," or perhaps only "those who might have had a better life."

When a federal minimum wage rate is raised, then everyone whose pay goes up is pleased. They can be interviewed on the Walter Cronkite show, and they can tell the American public what a good thing it is. Rather less visible is the man thrown out of a job because he is just not employable at the new rate. And totally invisible is the black teenager who never gets his job in the first place because of the new regulation. He does not know he is a victim of government intervention because he does not realize the connection between the wage rate and the fact that the factory is not taking any more workers.

Many federal regulations are designed to improve the job quality for itinerant workers from Mexico. Employers have been made to buy better and newer equipment, to pay them more, and to spend more on facilities for them. Every itinerant worker will speak enthusiastically of these improvements. We can see these workers and their families, and we can measure their gain. What we cannot see or measure is the effect on those Mexicans who might have escaped from poverty by becoming itinerant workers, but who have now been made unable to do so. They are still in their villages, outside the range of our media's vision. We never count them in our assessment of regulation.

We can take it on trust that the Occupational Safety and Health Administration has brought improvements to the lives of workers. We have to take it on trust because there is no evidence whatsoever that OSHA has reduced job-related accidents. There is evidence, however, that OSHA has thrown men out of jobs by making it impossible for small businesses to remain competitive. A plethora of regulations about lavatory seats and low level fire extinguishers has pushed prices up, reduced business, and lowered employment. I am sure that men lucky enough to be still at work are delighted with their new horseshoe-shaped lavatory seats; but what about the ones who lost their jobs?

If Regulation Man is to be praised for improving the conditions of work for those employed, he must also be blamed for the loss of jobs and opportunities which follows from his actions.

Social costs and victims which are not apparent at the level of a simple emotional response must be weighed against the immediately visible benefits before a true assessment can be made. Loss of jobs and opportunities, however, is by no means the most serious debit against regulatory activities.

If we begin to talk about nuclear power, Regulation Man and his allies instantly trot out stories of death and suffering from radiation. The fear and horror of Hiroshima is paraded before us, and we are told that the risks are too great; that the nuclear monster must be kept caged. Yet when we realize that a delay in going nuclear lengthens our dependence upon coal, we can make a quick and effective comparison to spot the invisible victims. The number of reactor-related nuclear fatalities since atomic power started is zero. The number of American miners currently disabled by black lung disease runs into tens of thousands at the very least. The number of deaths from black lung disease is unknown, but enormous. The number of deaths from mining accidents averages several hundreds each year; while the number of people dead or disabled because of the atmospheric effect of coal-burning is several thousands per year in New York State alone.

Of course nuclear power is dangerous. All forms of industry are dangerous to some degree. The question we ought to be asking is whether nuclear installations can be given safety features to enable them to produce more kilowatt hours per injury or death than coal-burning stations. On the face of it, it seems that it would take quite a few nuclear leaks to compensate for the number of deaths which coal-burning causes every year.

Regulation Man and his cohorts prefer the horror stories to the calculations. Perhaps the nuclear companies should play it his way, accusing him of wilfully conniving in the deaths of those miners and bronchial asthmatics. Perhaps we should wheel in all the hundreds of thousands of them on their stretchers to Senate hearings, and let the television cameras linger on the grief-stricken faces of relatives. In its social cost compared to that of coal, nuclear power is cheap, clean and humane.

One might think that the Federal Drug Administration presents the strongest case for regulation. Surely we do not wish to have poisons stuffed into our foods, and surely we must be protected from dangerous drugs? Unfortunately the FDA has very peculiar standards about what constitutes a poison. They seem determined to ban artificial sweeteners, despite lack of evidence indicating harm in human beings, whereas no action is taken against sugar,

which has been under grave suspicion for years both directly and for its contribution to obesity-related deaths and maladies.

Not content with a capricious policy of deleting food additives, the FDA inserts products of its own approval. Iron is added to my bread, not because Congress decided it, but because the FDA determined to use its regulatory power to that effect. The reasoning is simple, and is another typical example of looking at only one set of victims. Teenage girls and expectant mothers are believed to be deficient in iron in a minute number of cases; and the FDA's solution is to put iron in flour and bread so that they can receive more.

The reasoning is like that which would pour 30,000 tons of concrete over Washington in the hope of mending a crack in the White House steps. Actually, it is worse, for one food avoided by teenage girls and young women is bread. If they had put iron into diet soft drinks it might have made more sense, assuming that there is any way left in which to make diet soft drinks. Ah well, at least it does not do any harm. But it does. Middle-aged men are prone to chromo-hematosiis, a disease resulting from excess iron: and middle-aged men often eat sandwiches for lunch.

Unfortunately, we do not know who these men are. They are more of the invisible victims of regulation. All we know is that the incidence of chromo-hematosiis has increased in America, and that it may have something to do with the iron in bread.

On protection from dangerous drugs, it is by no means clear whom the FDA is protecting. We are perfectly entitled to ask whether the invisible numbers who would have benefited from the banned drugs are ever counted, or whether we are to include those who take their own lives because they cannot endure pain and suffering which is relieved by the new drugs in other countries. We can count the numbers who would not have fallen victim to fatal heart attack had the beta-blocker drugs not been delayed here for nearly one and a half decades. We cannot name the victims, but we can count their numbers by comparisons with Europe. We can note that if the FDA regulations had been in force at an earlier date, we would have no penicillin, no digitalis, and even no aspirin.

We can note also that the number of new drugs being developed in America has fallen to a tiny fraction of what it was before the FDA. The risk of an arbitrary and capricious ban is too great to sustain the investment. And while we wait for foreigners to develop the new drugs, hundreds of thousands of our own invisible victims suffer on with conditions which might have

been relieved. Again, we have to plead for a balanced assessment of gains and losses, instead of an emotional recoil from the honor of potential losses.

The infamous Delaney Clause which governs the FDA requires them to prohibit any substance which, when fed to animals in any quantity over any period of time, causes an increased risk of cancer. In the most absurd case, but still a valid one, it means that if rats fed with tons of the substance for a hundred years develop a one-in-a-million increased risk of cancer, then it must be banned for humans without any regard for the benefits it might have. The hormone growth promoter DES, which was used for cattle, has been banned on these grounds, and on the basis of a very slim cancer risk in very unlikely quantities of DES. It means, of course, that poor people eat less meat. Poorer nutrition makes them more susceptible to diseases, and likely to succumb more readily to infections and adverse conditions which they might otherwise have survived. No one, alas, weighs losses against gains. We can see and identify the one cancer victim; we cannot see the thousands who die as a result of poorer nutrition.

Lest anyone should suppose that the invisible victims of Regulation Man who have been considered thus far are only peripheral cases which do not affect the principle of regulation, they should consider the regulations about clean air and product safety. We are told that these are for our own protection, and that the question of unknown and unnumbered victims simply does not arise. This is incorrect. Everything costs money, even cleanliness and safety. Just as Oscar Wilde once defined the cynic as one who knows the price of everything and the value of nothing, so would I define the environmentalist as one who knows the value of everything and the price of nothing.

The blunt fact is that regulation puts up the price. If factories are required to meet ever tighter standards concerning their emissions, then their products will become more expensive. If manufacturers have to incorporate more features to protect unwilling customers from themselves, then the public will be able to afford less of their products. How can we begin to assess how much poverty has been caused by pricing some of the necessities of life beyond the range of the poor?

When a factory is ordered to stop dumping inert, but unsightly, chemicals into a lake, and given no reasonable period of adjustment, we can count the 13,000 men thrown out of jobs, and we can make some measure of the environmental impact of the EPA on their lives. But in

cases where the costs can be passed directly to consumers, we find no consideration of the social costs which are caused by this forced reallocation of resources.

The kernel of my charge against the regulatory agencies is that their structure might have been contrived to make them responsive to pressure from media and consumerist groups. They react to the visible on emotional impulse, and ignore the invisible which is revealed by rational calculation. We all know of cases in which factories have passed on to consumers the costs of tighter emission control. This constitutes a form of taxation levied in order to promote better health. My quarrel with Regulation Man is that there is never any kind of cost effectiveness survey to see whether more and better results might have been achieved for health by spending that money another way.

There are more intangible consequences when the notion of denied opportunity is taken into account. If the Interstate Commerce Commission regulations keep up the price for the transportation of our goods, and the Civil Aeronautics Board regulations keep high the price for the transportation of ourselves, who calculates against any possible gain the loss which is involved in lost opportunity? We might consider the family which takes holidays close to home because regulation has priced more distant destinations beyond their means; or even the man who has to spend so much on travel as a necessity that he is unable to afford a better education for his children. In an extreme example we might look at the family which spends so much on regulated products that they have to buy a smaller car, and are killed in an accident which a bigger car would have enabled them to survive. These, too, are victims of regulation.

My contention is that opportunity for ordinary people to expand their pursuit of happiness and to extend their horizons is a factor which ought to be looked at in these calculations, and my charge is that Regulation Man has once again looked only at the obvious and visible impact, taking no account of more subtle and far-reaching implications.

I added "liberty" to Mr. Nader's list of things worth working for because it was there at the founding of this nation, and I see no reason why it should now be deleted. In adding liberty to the goals worth attaining, I add the loss of the ability to make choices for ourselves to the debit side of regulation. By all means let us make our choices in full knowledge, but let them be made by ourselves rather than by a bureaucracy which claims to know better.

Our freedom of choice is eroded by our loss both of alternatives and of autonomy. We lose choice of alternatives when the range of products and services open to us is restricted, or

when the cost of those we cannot do without takes away our means to have others. A multitude of rules and specifications by the regulatory agencies has slowly revealed a consequence which few predicted. It has led to a striking decline in innovation. It always was risky to embark upon the research into new products and processes, and it always was the case that the rewards for success were appropriately greater.

The effect of the regulatory agencies has been to increase the risks of innovation while reducing the rewards. Proven performance requirements, impact on various factors of society, and limitations on marketing all add up to make innovation less attractive. It comes as no surprise to discover that we are spending less on research and development, we are tending to keep known products in established markets, and we are no longer forming the high technology growth companies. What we are doing is summed up simply: we are sacrificing an expanding future for a regulated present.

Innovation is the source of our progress. It is the cutting edge of the ever larger fulfillment of our aspirations. By attacking innovation, Regulation Man attacks tomorrow's range of choice as well as today's. By attacking an expanding technology, he attacks our capacity to solve tomorrow's problems. All of this is done in the name of maintaining standards.

We also lose choice when we surrender to bureaucratic agencies the power to make law. Our ability to influence legislation and to exercise some choice in it is very small even when laws are made by our representatives in open debate. This, by itself, is a powerful argument for minimizing the intervention of law into our lives. "The liberty of the subject," said Thomas Hobbes, "depends upon the silence of the law." By giving regulatory agencies the power to make detailed rules at will under very broad guidelines, we are surrendering even that vestigial element of control.

Of all of the laws to which we are subjected each year, only a very few are now made openly by our representatives, subject to some degree of public influence. Most emerge from the regulatory agencies as rules which have the full force and sanction of law. This is not only undemocratic; it is uncontrollable. Each agency rolls forward under its acquired momentum, propelled no longer by the will of the people but by the whim of the bureaucrat. The rules and innovations are not subject to full debate and Congressional approval: we are left with the rare and occasional power of specific Congressional veto, a power which can only be exercised after a vast time-consuming and heroic effort.

In many of the works of Regulation Man, the attention given to visible victims leaves the plight of the invisible victims unknown and unlamented. But when we add to all of those consequences the loss of our power as citizens to influence the rules which confine our behavior and restrict our choices, we can finally see the shape and the name of two of those previously unseen. The lesser of them is called democracy, and the greater one is called liberty.

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