

The New Social Darwinism

A FROWN IN THE SUNLIGHT OF PROSPERITY

Paul D. Carrington

SOCIAL DARWINISM IS ALIVE and well in our post-modern era and living under another name. Its new name (or sheep's clothing) is The Global Economy. As in its earlier iteration a century ago, it is an ideology threatening the stability of our law by suffusing it with seeds of class conflict.

The Darwinist ideology, we recall, was especially popular with industrial barons in the late 19th century. Their idea was that the grinding poverty of industrial laborers was predetermined by their biological deficiencies and could not be helped by those, such as the barons themselves, possessing greater natural endowments. Economic predation, it was contended, was a form of natural selection. No more than wild beasts could the barons be expected to consider the needs of those on whom they were forced by nature to prey. The more the barons feasted, they believed, the greater would be the glory of the Republic.

That brutal ideology was vanquished in the early decades of this century. To secure the social stability on which both government and

the national economy depend, the Progressive movement intruded government on the side of workers and farmers. Whatever the shortcomings of their program, and they were many, the Progressives demonstrated that there is no biological edict requiring us to accept the inevitability of economic predation.

It is now the dismal science of economics, not biology, that provides the rationale for the pitiless determinism making the falling wages of workers irreversible. Capital competing in the global economy, we are told, has no choice but to employ labor at a price as close to zero as the market will permit. Otherwise, the goods and services they market will be under-sold. If people have no special skills to sell in a global labor market, then, it seems that they are in competition with billions who will work for subsistence wages. Capital competing in the global market for goods and services cannot help but prey on their weakness. The Progressive response thus stands discredited and laissez-faire rehabilitated.

America is being riven in the late 20th cen-

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tury as it was in late decades of the 19th. Because we are prospering, the division is insidious. Many who are the prey have accepted the rhetoric of inevitability, at least for this moment of prosperity. There is little in human experience to suggest that they will continue to accept it when the moment ends.

Similar deepening of class divisions seems to be appearing in a hundred other republics around the world, many of them fashioned in part in our image. Most visibly in 1997 in Indonesia, Thailand, and Korea. Class divisions will, if they continue to deepen, destroy the trust sustaining fragile institutions of self-government. If those political institutions fail, disorder and chaos will occur, and the conditions of social stability on which economic growth and prosperity depend will vanish. A global depression more severe than that of the 1930s may be the likely consequence. Current events in Asia, if they are not a cataclysm, ought alert us to our vulnerabilities.

It is therefore time for those who favor self-government as the most reliable source of ordered justice and thus of social, economic and political stability, to take notice, and to begin to fashion a political response that will reverse the trend deepening economic class lines, and not only in America. Such a response may require that we moderate our headlong rush to embrace and if possible dominate world markets. We might conclude that a much more stringent antitrust policy is needed to inhibit the extraordinary aggregations of wealth we see everywhere around us, and that new methods be devised to curtail the political power associated with such aggregations. Or that the regulation of some industries is not so bad an idea as it has seemed to economic pundits, and that the protection of wages and job security should be valued more highly in relation to low consumer prices. Because the Republic, and therefore its market economy, depends on the security and contentment of the families of those who are most

vulnerable to the vicissitudes of markets, a primary responsibility of national policy ought be to protect the stability of those families, if need be at considerable cost to those best positioned to exploit the global economy.

THE LESSON OF THE PROGRESSIVE EXPERIENCE

There is a simple, but vital, lesson to be learned from the nation's earlier experience with social Darwinism and Progressive reform. It is that capital preying on labor can be constrained only by a government functioning on the same scale as the market in which capital is invested to employ labor. State and local governments are useful for many purposes and have been undervalued in recent decades, partly because of the misuse made by segregationists of the demand for "states' rights," but such governments are impotent in the face of the threat of the movement of capital away from high labor costs and high taxes. They cannot protect labor or redistribute wealth.

In 1875, America experienced a deep depression. Wages and employment fell, and in 1876, there was a national uprising of railway labor. That event commenced an era of two decades of bitter, sometimes bloody, dispute that at times threatened to become revolution. Those suppressing labor organizers (federal judges being prominent among them) were much attracted to Herbert Spencer's Darwinist ideology and it quickly penetrated much American legal and political thought despite the warnings of such thoughtful men as Thomas Cooley, who cautioned that wealth in its arrogance would destroy itself. In 1906, in his single most famous utterance, Oliver Wendell Homes, Jr., decried the inscription of Spencer's Darwinist dogma as constitutional doctrine.

Social Darwinism was, of course, only a new garb for the pretensions of class on which

all oligarchies have been erected. Ruling classes everywhere had long rationalized their statuses as entitlements. And it was that widely-shared human impulse to arrogance of class that had destroyed earlier republics such as Athens, Rome, and Venice. That oligarchic impulse never fully subsided in industrial America, but was repressed during the first eight decades of the 20th century. The Progressive idea holding class war at bay was to use law to restrain the ultimately self-destructive brutality of market capitalism by protecting the value of labor.

It was quickly learned, however, that no state or local government could provide the essential regulation or transfers because capital is mobile and tends to go where the costs of government are least. Thus, no state could effectively regulate railroads or other "natural monopolies" to assure protection of those who depended upon them for work and service; nor could they effectively protect the organization of labor or collective bargaining; nor protect the family farm from the hazards of unstable national food markets; nor shield local business from conspiracies to control markets; nor maintain a minimum wage; nor create a safety net of unemployment insurance, social security, or health care for those unable to provide for themselves; nor impose liability on employers for industrial accidents so that the costs of such accidents are imposed on investors and consumers receiving the benefits of industrialization. In short, state and local governments were virtually powerless to control the predation of labor by capital and prevent the Marxist inferno.

The cause of their impotence was that capitalists subject to state and local regulations or wealth transfers of the sorts just enumerated were driven to the wall, or reasonably feared being driven to the wall, by competing capitalists who bore no equivalent costs because they operated in states or communities not imposing such costs. The resulting flight, or more

frequently the mere threat of flight, of capital precipitated what Louis Brandeis denoted "a race to the bottom" in which states and cities competed for the favors of capitalists. Only the national government could apply its remedies across the whole of the national markets, assuring that all competitors in those markets shared the same social burdens. The indispensability of the national government in effecting economic reform was the central insight of the Progressive era.

The process by which states and cities were driven to the bottom is still in plain view. One example is the use of local taxes to bear some of the costs of local employers providing goods and services in the national or international market. Anyone building a large factory in America, or deciding which of two similar factories to close, is today guilty of corporate mismanagement if they do not negotiate a deal with state and local governments to pass costs on to local taxpayers, much as those who built the railroads were able to extort financial support from towns along their prospective routes, because towns withholding financial contributions could be by-passed and left to wither. The same process can also be seen in the extortion practiced by major league sports franchises imposing on reluctant city fathers the costs of lavish stadiums, complete with skyboxes for citizens with the greatest class pretensions. A city of moderate size not willing to tax itself for the comfort of oligarchic sports fans is denied sports altogether.

In the early decades of the 20th century, a solid political base formed around the Progressive hope for the national policy protecting the value of labor. That national effort was a moderate success. It helped produce a very large and fluid but stable middle class. One element in that stability was greatly increased public employment, with civil service. A second was employment by regulated utilities assured of stable markets for their services; many of these were national institutions pro-

viding transport, power, and communications. A third was the large class of professionals purveying newly technocratized knowledge and skills. A fourth, and perhaps the largest, element was organized labor that by means of legally protected collective bargaining extracted substantial wages and job security from industrial employers. Most individuals in those four large classes could expect to be employed until they retired in reasonable comfort and to earn enough to provide food and shelter for a family. Accordingly, they acquired large stakes in the continued existence of the Republic and the social stability it provided. Perhaps their work was not always as economical as a ruthless market can make it, but it was good enough by world standards.

It is not possible to measure with precision the importance of the role the national government played in this development of a stable urban middle class. It is, however, worth recalling that many, including Franklin Roosevelt, believed that the inferno was close at hand in 1937 if the New Deal was successfully blocked by the Darwinists lingering on the Supreme Court. It was that fear that animated the admittedly desperate court-packing plan. One might reflect on contemporaneous events in Germany, Italy, Japan, and Spain, and on the possible career of a Huey Long, had the national program been defeated. But the New Deal was not defeated, and the threat of the inferno faded into the distance for a half century.

FALLING WAGES & RISING COSTS OF LIVING

The prospect of the inferno is now returning. Beneath the momentary glitter of full employment, falling wages reflect the breakup of the middle class. Data produced in recent months may give us some cause to hope that this is not so in the United States. Yet they provide meager basis for optimism over the longer term

when the moment of prosperity comes to an end, as surely it must. There are at least four causes operating to erode the middle class, each bearing benefits as well as costs. They are familiar, but I will enumerate them.

First, there is the advent of the computer chip rendering much low-skilled labor dispensable. Robots populate many assembly lines, and personal computers have displaced many, many others.

Second, there is the internationalization of the labor market, forcing American industrial workers into competition with workers in pre-industrial economies. Our national government is increasingly sharing the impotence experienced by state and local governments a century ago. Democratic governments around the globe are being forced to weaken the measures taken in the past to protect the value of human labor. And it is not merely industrial investment that is drawn to low labor costs; even some service providers are now able to displace expensive American workers with cheap foreign labor. Court reporters, for example, compete with transcribers in Asia who receive and transmit signals via satellite. Computer programmers in Bangalore are beginning to displace those in Silicon Valley. Partial relief from this pressure is achieved by generous immigration laws to bring Bangalorian programmers to America, but immigrants put the same competitive pressure on wages whether they are here or there.

Third, there is deregulation. Animated by the potential cost savings achieved by market capitalists, regulated industries and their workers have been stripped of the comfort of secure markets and hence of security in employment.

Fourth, there is privatization, a public policy parallel to deregulation that moves employment off the public payroll into the private sector. This saves public cost, but at the expense of employment security for those performing public services. Similar practices of

subcontracting and using temporary workers are in fashion among multi-national employers to divest themselves of moral and legal responsibility to those who do the work producing their growing profit margins. This was, of course, the issue raised by the United Parcel Service strike of 1997, an event that marked growing public awareness of the threat.

Together, these events have reduced the real value of labor. Those who might a generation ago have found low-skilled manufacturing jobs paying enough to support not only a substantial family, but a recreational boat or even a modest second home, may now be lucky to find similar work with a contract supplier who will not survive the next economic downturn and who cannot afford to provide health benefits. While much of the wealth of the investing class has been created without direct cost to those who work, we are witnessing a steady wealth transfer from those of modest wealth to those with great wealth.

The falling value of labor accounts for the demise of inflation, now, as Lester Thurow describes it, essentially a burnt out volcano. Even with full employment in 1997, the wages of many do not rise. Indeed, we might be experiencing deflation (a normal condition over much of human history), were it not for the continuing increase of health care and education costs, items that are in the "post-modern" era absolute necessities. The increase in these costs is of little consequence to those with large incomes, but of desperate importance to those whose economic status is in decline.

The increase in health care cost seems to be driven in large part by the improvident policy of socializing the cost but not the production of much health care, especially that of the elderly whose needs for health care are potentially infinite. This policy greatly elevated demand, but did nothing to control price. A secondary effect of this policy has been the loss of fringe benefits for many low-skilled workers, who are

left to face awesome costs without insurance or even the prospect of the charitable care provided a generation ago.

The other rising price is that of education. Real school taxes and real public college tuitions continue to rise, while the price of private education has escalated manifold. While health care has improved as a result of increased expenditures, it seems that educational services have, despite rising cost, declined in quality, at least as measured by their impact on those who most need to be educated.

Those who, for whatever reason, are not able to exploit the market for services get a low return on the investments they are able to make in their human capital. The pattern has become relentless: gross domestic product rises steadily; return on capital rises dramatically; wages stagnate; and the real costs of the services needed by wage earners rise. Thus, we rend the social fabric on which democratic politics and law depend.

More than a few males, in part because of their modest ability to provide for their families, have been cut loose from them, if not from their legal obligations of support. It should not surprise us if a significant number of them, even in a time of prosperity, are candidates for a self-selected militia organized in hostility to the existing social order. "Don't tread on me" is a slogan with a future as well as an illustrious past. For other aggressive males who do not passively accept their status as non-starters in the world labor market, our prisons have experienced exponential population growth. America has more prisoners per capita than any other nation, including those whose human rights policies we so ardently decry.

THE NEW OLIGARCHY

While millions are losing their membership in what it has pleased us to call the middle class,

scores of thousands of us have promoted ourselves into a new post-industrial oligarchy. What the American educational system as a whole seems to do best is to serve at the high end as a factory for human capitalists who become credentialed as potential members of a ruling class. Many human capitalists are enjoying stupendous incomes.

This is, of course, not a sudden occurrence; it has been observed by at least three eminent historians. Robert Wiebe dates World War II as the pivotal event in the ascendancy of what he denotes as “the national class,” i.e., those with property, income, mobility and disdain for a localized underclass.¹ Christopher Lasch, in his posthumous work, makes a similar observation, perceiving that the elite have revolted, in a betrayal of democratic institutions.² Michael Sandel detects a crisis deepening in recent decades and associated with the decline of the sense of community that sustains those institutions.³ George Liebmann, a Baltimore lawyer, has expressed a related alarm about the declining authority and competence of local government, i.e., those institutions best situated to nurture the loyalty of citizens to their republic.⁴

Among the effects of this development is the steadily rising demand for every form of luxury. Sometimes this creates employment for the post-modern proletariat, but much of the new employment is menial and insecure. Among the luxuries increasingly enjoyed by the new oligarchs are elegant child care and elaborate private education. A secondary effect of these enjoyments is to withdraw from the public schools those children best prepared to be educated, thereby contributing to the further weakening of those institutions. Also a feature of life in the oligarchy is resi-

dential isolation, sometimes in high-rise structures or sometimes in elegant enclaves, in either situation with entry controlled by private police. And post-modern oligarchs have no need to participate in political discourse with fellow citizens, for their money has indeed become the “mother’s milk” of those who stand for election. With the advent of television, political participation is for most of us limited to the receipt of phone calls from hourly workers seeking money to pay for media blitzes designed on the basis of advice received from high-priced consultants using paid focus groups. Such isolating luxuries serve to reinforce the usual indifference of an upper class to the fates of lesser folk and to perpetuate class lines.

It seems that this indifference has been enlarged by the collapse of the Soviet Union. Many have taken that event as proof not only that Marx was wrong, but that there is therefore nothing to fear from the class divisions he depicted as a mortal danger to their welfare.

Whatever the mix of causes, members of this post-modern oligarchy tend to be attracted to the new social Darwinism. The world view of many rationalizes their rewards as one of predestined desert and enables them to disown responsibility for fellow citizens lacking the wherewithal to benefit from a global market and who are the natural prey of those required to produce goods and services at the lowest possible labor cost.

THE HAZARD TO THE REPUBLIC

Marx may be dead, but class war was endemic in human societies long before he wrote of it. Most social orders, at least among those organized around the demands of agriculture, were

1 SELF-RULE: A CULTURAL HISTORY OF AMERICAN DEMOCRACY (1995).

2 THE REVOLT OF THE ELITES AND THE BETRAYAL OF DEMOCRACY (1995).

3 DEMOCRACY’S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY (1996).

4 THE GALLOWS IN THE GROVES: CIVIL SOCIETY IN AMERICAN LAW (1997).

founded on the arrogance of a ruling class. Until recent times, only a very few social orders, such as those of republican Athens, Rome, and Venice, made even a gesture of concern for the serfs or slaves on whose backs the relative prosperity of a ruling class was erected. Even those few republics did not include all in the governing class, and they were soon torn apart, with class mistrust playing a major role in their disintegration.

Eighteenth century Americans established a Republic, but with great anxiety for its prospects. Washington's army was comprised almost entirely of farmers and craftsmen who were willing to risk death to separate themselves and their families from a mercantile policy designed in London to benefit English oligarchs. Many of their leaders were apprehensive that class war would likely destroy the Republic they were creating. They were not mistaken in those fears, for they themselves shared abundant oligarchic impulses, even if most were themselves but a few generations descended from peasants.

However, with luck so great as to suggest divine intervention, the Republic survived. A major reason was that the social conditions of the frontier reinforced reverse class bias and kept class pretense in check in the 19th century. Despite that, the Republic survived by the margin of an eyelash. The Civil War was in important respects a class war; many of those who gave their lives did so, *inter alia*, for the cause of "free labor." Then as the frontier closed, industrialization created vast new opportunities for class distinction. A key to the Republic's durability through many travails has been the presence of a dominant middle class of citizens who saw their own welfare and that of their progeny as linked to the fate of the Republic. Millions in this century willingly put their lives on the line to assure its survival.

The survival of the Republic was in turn a key to the development of the market econ-

omy to its present high level. We capitalists are prone to take economic development for granted as a self-generating and self-sustaining event. But the economy rests on political stability that in turn can only be erected on social stability. Social upheaval produces political chaos to which despotism is the inevitable response. Market economics and national economic growth cannot be sustained in such an environment, and of course a world economy cannot. Unrestrained market capitalism therefore bears the seed of its own destruction.

The lesson that market capitalism can be effectively restrained only by a government that is big enough to operate on the whole market in which the capitalists function is now critically important even to the survival of market economics itself. There is no government capable of regulating global markets to protect the value of labor, nor is there any prospect that such an international capacity could be created in the foreseeable future. While treaties among economic powers may achieve many useful purposes, it is difficult to envision such instruments serving to protect the price of labor or effecting wealth transfers through public services to those whose labor commands an insufficient market value. Hence, the appeal to internationalism is in reality an appeal to unrestrained exploitation of low-skilled labor by capital. *Laissez-faire* is not made a wiser policy by wearing international garb. It may, as Nobel laureates assure us it will, elevate gross domestic product, but every step of elevation is another depreciation of the social and political stability of the Republic that enables the economy to function as it does.

Two ineffective responses to the growing class division are frequently heard. One of these is to so educate American workers that most are themselves human capitalists capable of exploiting global markets. Doubtless we should do what we can to effect that result. But educational institutions are constrained

not only by the finite limits of our abilities to teach and to learn, but also by the same economic forces bearing on the value of labor. Schools are seldom better than the parents who support them. Parents demoralized by their inability to provide support for their children adequate to assure their prospects are seldom effective in raising children to compete in world markets. Moreover, state and local governments are disabled from spending greater sums on children to provide surrogate parents because high taxes drive capital and employment away, threatening the stability of those families being served by the public schools and like institutions. In addition, the widely observed disintegration of the family and neighborhood communities compounds the other problems. The idea that our community colleges can turn the offspring of single, adolescent, unemployed, substance-addicted mothers into a cadre of world class workers resonates with Marie Antoinette's dictum: "Let them eat cake."

The other remedy, even more resonant with the spirit of the French aristocracy, is to stimulate economic growth. More water in the stream, we are frequently told, will raise all the boats. If we lower taxes on the lords, it is argued, they will save and invest and make us all richer and more secure. That is the premise of the flat tax movement. Repeated failures of that policy have had meager educative effect. In its present form, the federal income tax may be inefficient, but there is no cause to hope that any tax reform favoring the investing class will be of material benefit to those citizens whose economic security is eroding because they are deficient in skills salable in a world labor market. The 1997 assault on the Internal Revenue Service is but an episode in the growing resistance of oligarchs to progressive taxation; by placing the burden of proof on the Service and thus weakening the tradition of self-reporting, the "reform" confers a benefit on those who cheat. Most who are in a posi-

tion to do so are rich. Congressman Arney, among the champions of the 1997 "reform," is candid in denouncing progressive taxation as "social engineering," but blind to the social and political implications of the reverse engineering he favors.

Each of these proposed remedies is sometimes conjoined with advice to workers that they should resign themselves to recurring periods of unemployment and re-training. This advice is generally heard to come from persons who are among those who seek and enjoy risk. It betrays a profound misconception and underestimation of the human need for stability, of the misery and self-disesteem experienced by most fellow citizens in the face of large uncertainties, or of the desperate impulse many feel to resolve such uncertainties. Widely shared uncertainty and anxiety is an environment for destructive, statist demagoguery.

A reason it is hard for us to face reality in these matters is that so many of us are capitalists. It is not, as it was a century ago, a relatively few predatory men who benefit from the exploitation of labor by capital. All of us who own shares or have an interest in a pension fund exploit labor; oftentimes, we are exploiting ourselves. Also, all of us who consume goods continue to enjoy prices for many goods reduced by the competition of less expensive foreign labor. In the glitter of these gilded benefits, it is hard to see their relation to social disintegration, increasing violence around the world, the vanishing effectiveness of government, and the prospect of worldwide economic collapse.

Beyond the crude and diffident suggestions made at the outset of this polemic, I have no program of remediation. It would for the present be a sufficient achievement to cause readers to recognize that free trade, for all its welcome benefits, is also potentially poisonous to the Republic and its law, and thus potentially poisonous also to the long-term future of

market capitalism. America with a Dow over 12,000 and consuming an abundance of goods made with foreign labor, but with collapsed wages for the bulk of the workforce, half the world's prisoners, millions of uneducable children, and more millions of homeless, will be unlike the America the world has known and regarded for these two centuries and more. The Declaration of Independence and the Gettysburg Address will increasingly appear as meaningless or even cynical rhetoric. Such a republic will not stand for long, nor will the market that depends upon it.

To be sure, ours is not the only threatened republic. We now take satisfaction in the hun-

dreds of republics nurtured by our national policy in this century, but most of them are fragile and all of them are vulnerable to the process of social disintegration caused by uncontrolled market capitalism. Many are likely to precede us in devolving into social orders with the class structure of 18th century France and the civil liberties of Nazi Germany or the Soviet Union. Such republics will be defended against their enemies with little more zeal than was the Republic of Zaire. Marx will have been proved not wrong, but merely out of season; the inferno he foretold will be at hand not merely for America but for the world. *GB*