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Myths of the Nanny State

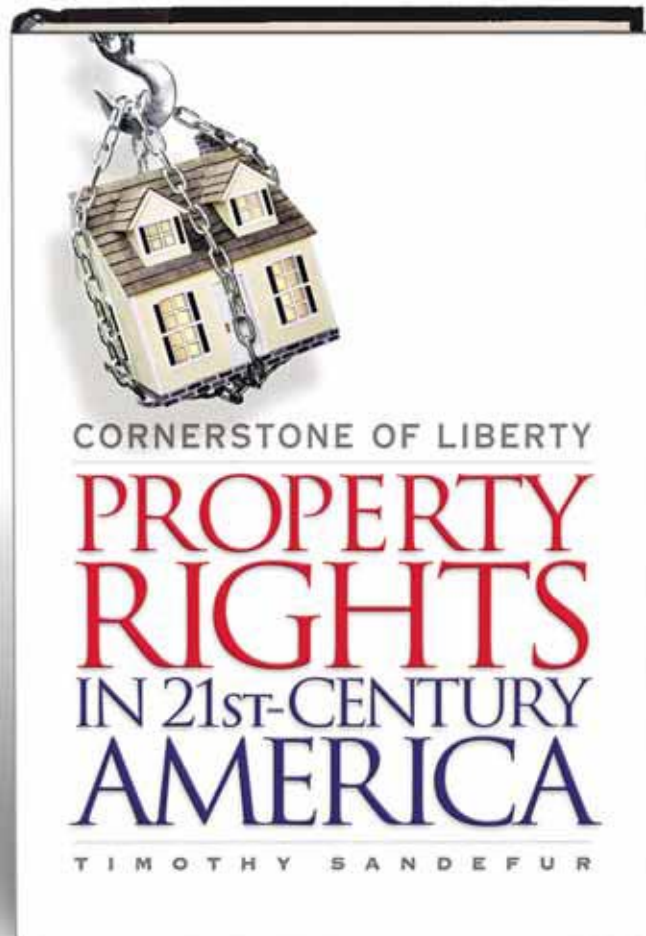
BY RADLEY BALKO

The late economist Julian Simon was libertarianism's great optimist. Classical liberals are naturally cynical about government and, as Jefferson famously put it, its natural tendency to grow and for liberty to lose ground. The "upside" of libertarianism, however, has always been the philosophy's ability to see the potential in individuals and in people's proclivity to make good decisions about their own well-being and, in the process, better the plight of humankind.

No one put humanity's explosion of wealth and prosperity into better perspective than Simon. Simon's targets were the doom-and-gloom environmentalists and zero-population-growth activists who in the last half of the 20th century peddled dire predictions of the coming cataclysm they said would be wrought by free markets and American consumerism. Using a wealth of economic, demographic, health, and consumer data,

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The Supreme Court's decision last year in the *Kelo* case created a firestorm of interest in protecting property rights. Through a combination of real-life stories and solid legal analysis, Timothy Sandefur shows why property rights are the "cornerstone of liberty," shows how they are protected in the U.S. Constitution, and critically examines how courts and legislatures have diminished property rights. Sandefur then lays out an agenda for protecting property rights in the aftermath of the Court decision. **MORE ON PAGE 3**

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Simon showed how capitalism has made us more prosperous, healthier, better educated, longer lived, and generally better off than we've ever been. Furthermore, he demonstrated how prosperity and technology tend to make scarce resources *more* abundant, not less.

Though Malthusian prophets still pop up from time to time, Simon seems to have largely won that debate. Today's critics of free markets don't invoke Armageddon as their predecessors did. Nor do they declare that prosperity will be our undoing. Rather, today they argue that we simply aren't equipped to handle our freedom and our success. Instead of invoking government to heavily regulate the economy and redistribute wealth, they now argue that we need government to make many of our personal decisions for us, because individual Americans can't be trusted to make them on their own.

The Rise of Parentalism

In a recent paper published in the journal *Public Choice*, “Afraid to be Free: Dependency as Desideratum,” Nobel Prize-winning economist James Buchanan composes a new taxonomy of socialist threats to liberty. Buchanan argues that the conventional threats to freedom from managerial socialism (central planning) and distributionist socialism (the welfare state) are today joined by paternalistic socialism and “parental socialism,” which Buchanan describes as the willingness among many to allow the government to take control of their lives.

The emerging threat to American liberty today, then, is a combination of these latter two forms of socialism—the desire among some in government to interfere in nearly every aspect of our lives, and the lack of concern on the part of many Americans that this is happening. And while conventional critics of capitalism came primarily from the left, the parentalism-paternalist movement isn't as easily marginalized.

From the left, for example, a new class of critics has emerged under the banner of

“public health.” True public health is, of course, a perfectly legitimate function of government. The collective nature of the threats posed by highly communicable diseases, for example, makes protection from them a legitimate public good, deliverable by government. Today one might also include the threats posed by biological or chemical terrorism.

But modern “public-health” initiatives have moved well beyond what could reasonably be classified as public goods. Today, government undertakes all sorts of policies in the name of public health that are aimed at regulating personal behavior. It began in the 1970s and 1980s with anti-smoking initiatives and today includes a wide range of programs, including efforts aimed at reducing alcohol consumption, encouraging seatbelt and motorcycle helmet use, regulating diet and lifestyle in the name of curbing obesity, federalizing local issues like speed limits and the minimum drinking age, and generally using the power of the state to regulate away lifestyle risk.

But the American right, which has traditionally claimed to favor limited government, is no better. The Republican-led Congress is attempting to prohibit Internet gambling. That same Congress wants to expand the FCC's regulatory power beyond broadcast television to include cable television and satellite radio. President Bush's Department of Justice has declared prosecuting pornography a “top priority.” And of course, the Bush administration has enforced the nation's drug laws with particular vigilance, paying little heed to traditional conservative notions of state sovereignty. The White House has vigorously defended the federal government's authority to regulate medical

marijuana, physician-assisted suicide, and prescription painkillers, for example, even in states where voters have explicitly indicated their preference for laxer enforcement. In the case of medical marijuana, White House efforts may have resulted in the final death-knell for federalism.

Though the public health movement seems to have come largely from the left, and the “culture war” crusades against gambling, pornography, pop culture, and drugs largely from the right, it's important to point out that there is significant convergence between the two. Fervent anti-alcohol activists such as former Carter administration official Joseph Califano, for example, are every bit as active in promoting drug prohibition. *National Review* contributing editor David Frum has called for a “fat tax” on high-calorie foods, joining more left-oriented organizations like the Center for Science in the Public Interest. Family values advocates like William Bennett and John DiIulio and Republican Congressmen like Tom Osborne and Frank Wolf have joined with liberal organizations like the Robert Wood Johnson Foundation in calling for heavy government regulation of alcohol. And there seems to be wide, bipartisan support for a powerful state on issues like continuing the drug war, instituting smoking bans in private bars and restaurants, the aforementioned ban on Internet gambling, and increased government scrutiny over pop culture media such as rap music and violent video games.

On the right, movements like *National Review* contributor Rod Dreher's “crunchy conservatism” borrow bon mots from Marx in denigrating wealth, consumption, and consumerism. Meanwhile, the left-leaning editorial boards at the *Washington Post* and *New York Times* abandoned traditional civil liberties concerns in supporting the Supreme Court's ruling upholding the federal ban on medical marijuana, because a ruling the other way might have adversely affected the federal government's massive regulatory state.

As *Reason* magazine's Jesse Walker has put

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it, “There is no party of tolerance in Washington—just a party that wages its crusades in the name of Christ and a party that wages its crusades in the name of Four out of Five Experts Agree.”

Progressivism Redux

The lack of a clear ideological affiliation makes today’s paternalism-parentalism increasingly resemble the early 20th century’s progressive movement. Both are comprised of a motley mix of values crusaders and “nanny staters.” Both value the “collective good” over personal choice, precaution over risk, and the community over the individual.

Perhaps it’s not surprising, then, that the public discourse of late has been rife with nostalgia for progressivism. People on the left, having sullied the good word “liberal,” now call themselves “progressives.” Republicans from George W. Bush, the current president, to Sen. John McCain, who some see as a leading candidate to be the next, have publicly expressed their fondness for Theodore Roosevelt, the first president of the Progressive Era.

New America Foundation fellow Joel Kotkin explicitly called for a return to Progressive Era politics in a *Washington Post* essay, while Michael Gerson, who served as President Bush’s chief speechwriter the last six years, recently named progressive icon William Jennings Bryan one of his personal heroes. Perhaps most bizarrely, the Drug Enforcement Administration has recently taken the position that alcohol prohibition—the crown jewel of Progressive Era reforms, and one of the most catastrophic experiments in American history—was in fact a success.

As Buchanan points out, parentalism and paternalism are at heart merely new forms of socialism. They value community and the collective good over choice and individual freedom. Public policy recommendations aimed at curbing alcoholism or obesity, for example, are rarely aimed at alcoholics or obese people themselves. Rather, they’re usually aimed at taming “the

environment” of alcohol or obesity, code for the food and alcohol industries. Specific recommendations inevitably target marketing and advertising, the tools free markets use to distribute information.

When policies are aimed at individuals, they’re generally redistributionist in nature—sin or vice taxes, for example. Proposals like the “fat tax” tax all users of high-calorie foods, with proceeds going to obesity treatment and prevention programs—meaning they redistribute wealth from people who consume calorie-dense foods responsibly to those who don’t.

Which brings us back to Julian Simon. Simon used empirical data to deflate claims that capitalism and industry were making us sick, irreparably damaging the earth, and bringing about the end of humanity. Simon instead showed how free markets and liberal institutions ushered in health, wealth, and longevity unprecedented in the history of man.

The emerging paternalist-parentalist-socialist threat to liberty, then, is in many ways the same old threat dressed up in new clothes. Critics of capitalism and consumerism can no longer credibly predict that free markets will eradicate the world’s food supply. So today they argue that the food industry has created a nation of gluttons (which, considering that the bulk of human history has been a struggle against starvation, isn’t such a bad problem to have). Of course, only a society prosperous enough to do away with child labor can worry about its children having too much to eat. The proliferation of Internet pornography or online gambling isn’t of much concern in countries where less than 5 percent of the population has Internet access.

The “problems” this latest form of socialism attempts to solve, then, are afflictions of

prosperity. They’re problems much of the world would still consider itself fortunate to have.

It’s also not clear that they’re really problems at all.

Getting Better All the Time

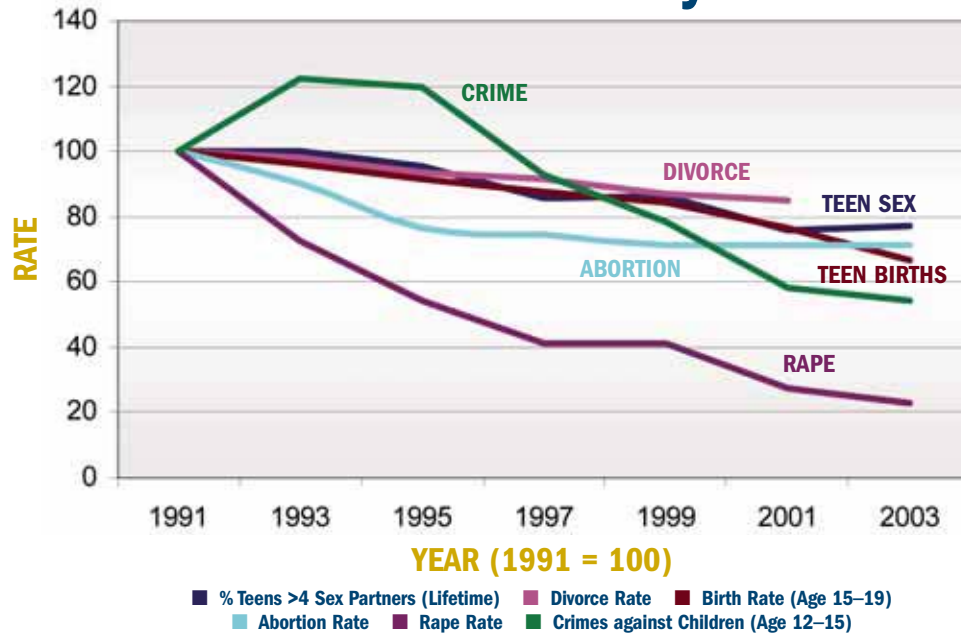
Consider America’s “cultural decay”—something conservatives are fond of invoking. Implicit in calls for government regulation of pornography, obscenity, gambling, alcohol, and the like is the assumption that cable television, pop music, the mainstreaming of pornography, and other cultural pariahs are breaking down America’s important social institutions. But there’s little data to suggest that’s the case. In fact, nearly every social indicator is trending in a direction most of us would consider positive.

Here are just a few examples, culled from government agencies and advocacy groups: Teen pregnancy is at its lowest point since government researchers have been keeping statistics. Juvenile crime has been falling for 20 years (though there was, admittedly, a slight uptick last year). Crimes against children are down. The number of reported rapes has dropped dramatically over the last two decades, even as social stigma against rape victims has subsided. Despite a negligible increase last year, overall crime in the United States has also been in decline for 15 years.

There’s more: Divorce is down. Teens are waiting longer to have sex. High school dropout rates are down. Unemployment remains low. And over the past decade, the overall abortion rate has dropped significantly. If Janet Jackson’s “wardrobe malfunction,” Internet porn, and violent video games are indeed inducing a nationwide slouch toward Gomorrah, as conservative icon Robert Bork once put it, it’s difficult to discern from those statistics.

What’s most intriguing is that all of these trends have been taking place since at least the mid-1990s—a period during which technology has given us more freedom to

Cultural Decay?



indulge in sin and vice than ever before, and an era in which Americans have become markedly less judgmental. The last 15 years have seen more tolerance for gay lifestyles, with shows like *Will and Grace* and *Queer Eye for the Straight Guy* finding mainstream audiences. The 1990s also saw the rise of the Internet, which has given Americans private, unfettered access to gambling and pornography; enabled the anonymous purchase of alcohol, cigarettes, and prescription drugs; and given even the oddest and most bizarre of subcultures the opportunity to find others just like them, and to create communities. The 1990s also saw the rise of gangsta' rap, violent video games, Howard Stern, and *South Park*.

In 2004, the conservative magazine *City Journal* reported on a series of polls showing that when it comes to issues of vice, personal behavior, and morality, Americans aged 30 and under are more conservative than several prior generations. Yet they're also more tolerant of other lifestyles, less judgmental, and heavy consumers of the pop culture conservative opinion leaders tell us is so corrupting.

Interestingly enough, the one statistic that bucks these trends is drug use. Drug use among adults is actually up over the past 20 years. But drug use is one area of personal liberty the government has gotten more aggressive about policing, which suggests that government efforts to control our decisions not only stifle individual freedom, they aren't very effective, either.

But even with drug use, there's some evidence that Americans are behaving responsibly. Though recreational use is up among adults, it's actually down over the same period among people under 18. So while people old enough to make their own decisions

about their lives might be more likely to relax with the occasional marijuana cigarette, they're also making more of an effort to steer their kids clear of what are clearly adult activities.

Similarly, empirical data strongly suggests that despite claims from the public health alarmists that obesity, smoking, alcoholism, and any other number of ailments are wreaking a health care catastrophe in America, America is actually healthier than it's ever been.

Life expectancy in the United States reached an all-time high last year. Americans at every age can expect to live longer than ever before. The gap in life expectancy between blacks and whites is closing, too. Heart disease is in sharp decline since the early 1990s, as is stroke. Deaths from and incidence of cancer are also in retreat, including all but one of the 10 types of cancer most associated with obesity. The absolute number of deaths due to cancer also fell by 50,000 in 2004, a remarkable feat considering that America's population continues to grow. Yet these heartening trends have persisted despite the fact that, over the same period, many Americans have put on weight. Certainly, advances in medical technology, improvements in screening and treating diseases, and miracle drugs like statins deserve much of the credit (though it's worth pointing out that many of the

same public health groups oppose the very free market aspects of U.S. health care that made these advances possible). No one would argue that excessive obesity is something to strive for. But if America's thickening waistline really were the looming disaster it's made out to be, we should at least be seeing the early signs of the cataclysm. That hasn't happened.

Like the doom-and-gloomers Simon fought, then, there simply isn't much evidence to support the sky-is-falling scenarios offered up by proponents of modern paternalism. Just as Americans are wiser, savvier, and more responsible with their own money than the government is, they also seem to be doing just fine when making their own decisions about virtue, vice, and lifestyle. Of course, even if they weren't, there are philosophical objections to government meddling in personal affairs.

The early 20th century journalist H. L. Mencken, a fierce critic of the original progressives, wrote, "the urge to save humanity is almost always only a false-face for the urge to rule it." That was true last century, when humanity's saviors were central planners who marched much of the developing world into starvation. And it's true today, when our "saviors" want laws, regulations, and government "awareness campaigns" pushing the hand of government into nearly every facet of our lives.