

American nightmare

THE ISSUE | The middle class struggles still.
OUR OPINION | As the gap between the haves and have-nots continues to grow, more give up on the American Dream.

Recently the *Wall Street Journal* ran a story under the headline, "Lost Decade for Family Income," in which it reported that "living standards at the middle of the middle class have stalled" and worse, with new Census data showing inflation-adjusted income declining almost 5 percent in the last decade for that group.

Not even the considerably-less-than-robust 1970s gave this last, abysmal decade a good run, as median income then still rose almost 2 percent despite high unemployment and inflation.

Meanwhile, using the same Census data, the Associated Press identified a record gap between rich and poor in America – at least since the government started keeping records on household income in 1967 – with the current spread between the top and bottom quintiles at almost double the historic low achieved in 1968. It's easy to manipulate numbers, of course, and critics of this comparison will point out that the Census Bureau doesn't account for taxes paid by the wealthy or safety net benefits received by the poor, both of which would narrow the difference.

In any case, it seems clear that America's middle class has seen better days, and this income inequality – or work inequality, as some would suggest – has all kinds of social implications, from declining birth rates and mobility to fewer marriages. Some young adults are just postponing growing up, as the number of those ages 25 to 34 still living with Mom and Dad has soared – to some 5.5 million now – over the last few years. There's a huge generation wealth gap, with senior citizens no longer in the job market faring well, relatively speaking, over the last decade – their incomes up almost 6 percent – while young adults expected to keep the likes of Social Security afloat struggle. That does not speak well for the sustainability of the system.

Meanwhile, people without jobs or in occupations that don't pay much fork over little to nothing in taxes for the services they consume disproportionately, struggle to keep up with mortgages if they have them at all in a situation that has been at the center of this economic crisis, put off buying things in a consumer-based economy that then founders, resulting in even fewer work opportunities. Call it a vicious cycle. But look at the bright side: This recession has produced a drop in illegal immigration.

Arguably we are witnessing the erosion of the American Dream, or at least a loss in confidence on behalf of millions that they can ever achieve it, which has all sorts of unpleasant ramifications, from crime to declining productivity to long-term dependency. That dream, for most, was not that they might become rich someday, but that a job that compensated them well enough to own a house and car and send the kids to college was within their grasp.

That dream is so much at the core of what it has long meant to be an American in this country that you'd think politicians, alarmed by the above numbers, would be talking about it. Alas, the words "income inequality" rarely pass their lips.

Instead they talk around it, addressing safer issues like the nation's deficit spending and tax policy, or unemployment if it suits their political ambitions. Unfortunately, it's hard for most to engage in the subject without lobbing missiles at the other side from whatever camp they've settled into in the ongoing class war. The poor and sometimes the middle class are lazy and unskilled, or the rich are greedy and unfeeling, take your pick. For the most part both are caricatures. It doesn't really make any sense, as from where we sit the combatants need each other.

Industrialist Henry Ford may have had it figured out. Almost a century ago, he nearly doubled the rate of pay at his factories for most of his assembly line workers (to the then-unheard of \$5 per day wage, about \$110 in today's dollars) and provided other benefits including a shorter work week on the theory that he would be rewarded in return with a more skilled, efficient and productive workforce, labor peace and workers-turned-consumers who could now afford to buy the products they made – his automobiles. For most of the 20th century, it worked out for both parties.

That attitude seems all but nonexistent today. The pendulum always swings, never in perfect balance. One side, it seems, inevitably goes too far, abusing its leverage of the moment in what is perceived as a zero-sum, winner-take-all contest. As such it's almost impossible to have an honest dialogue about the subject so that both parties can recognize reality and attempt to reach mutually beneficial solutions instead of pummeling one another. Fundamentally, how do we grow the pie so that everybody gets a bite?

We're not sure America can continue to dodge that discussion.

It would be one thing if we could just blame all this on the recession, but in fact middle class wages stagnated well before, which even some prominent conservatives have noted is not healthy for the long run. It would be one thing if the sacrifice from this recession was more shared, but the numbers don't show that in the upper income brackets; maybe we should be talking about "sacrifice inequality." It would be one thing if we were witnessing a trickle-down effect from the Bush tax cuts being in place for most of the last decade, if more Americans were still assured of a rising tide lifting all boats, but it's not reflected in employment numbers. It would be one thing if employers didn't have a legitimate beef about skill levels not being in sync with the demands of this modern economy. It would be one thing if we didn't have to recognize the reality that we operate in a global economy now, quite unlike the one Henry Ford faced in 1914.

Five years ago free market champion and former Federal Reserve Chairman Alan Greenspan told Congress that this trend "is not the type of thing which a democratic society – a capitalist democracy – can really accept without addressing." It was true then, it's truer now.

ARTIST'S VIEW

SUPREME COURT ISSUED "GREENBACK"



COMMENTARY | BRIAN W. WALSH

Traps for the innocent

What do former Indianapolis 500 champion Bobby Unser and small-businessman Abbie Schoenwetter have in common? Both are victims of "overcriminalization," a trend that has caused the number of federal laws to spike dramatically in recent decades. And both of these otherwise law-abiding Americans recently told Congress about their experiences.

Unser and Schoenwetter spoke at a special hearing held by the House Subcommittee on Crime, Terrorism, and Homeland Security. It was a rare Washington event – a truly bipartisan gathering, convened by Chairman Bobby Scott, D-Va., and Louie Gohmert, R-Texas.

The term "overcriminalization" may be unfamiliar, but the problem it describes is not. Vague and overbroad laws have become a prevalent part of our legal fabric. In fact, research shows that a single Congress introduces hundreds – and enacts dozens – of non-violent criminal offenses that are poorly drafted, redundant, and lack guilty-mind ("criminal-intent") safeguards adequate to protect the innocent.

Equally as disturbing has been the growth of criminal law in areas typically reserved for civil fines and administrative sanctions. Actions not otherwise morally blameworthy have increasingly become the source of criminal sanction.

The cases of Unser and Schoenwetter are prime examples of such unbridled growth in the criminal law. Unser was convicted of a federal crime for allegedly operating a snowmobile in a national wilderness. If he did indeed enter it, he did so unknowingly while he and a friend were lost for two days and two nights in a ground blizzard.

Schoenwetter spent five years in prison for "smuggling" lobsters into the U.S. in violation of Honduran fishing regulations, despite the fact that

none of the regulations were valid at the time. Until last June, the federal "honest services" fraud statute was also another prime example of overcriminalization. The law criminalizes depriving "another of the intangible right of honest services," whatever that means. Violations could be punished by up to 20 years in prison. It had been used to charge thousands of individuals across the socioeconomic spectrum until all nine justices of the Supreme Court ruled in a set of three cases in June that the statute was unconstitutionally vague.

Georgia Thompson, a Wisconsin civil servant, was one such victim. Thompson was charged with "honest services" fraud after she awarded a state contract for travel services to the bidder with the best prices and second-best service rating. Because the "honest services" statute was so flawed, federal prosecutors were able to build their theory of Thompson's guilt on allegations that she "made her supervisors look good" and thus "improved her job security."

Not only did a jury convict Thompson under this preposterous theory, a federal judge denied her motion to overturn the jury's verdict and sentenced her to four years in federal prison. A federal court of appeals eventually reversed her conviction, but by then Thompson had lost her job, her house and her good name. She had been driven into bankruptcy and served four months in a federal penitentiary. Most federal officials have never met an overbroad law they didn't like.

They don't see any problem with the "honest services" statute or, for that matter, any other examples of overcriminalization. You can't blame them for trying; broad, vague laws give them discretion to act as they see fit.

But if that's what we want, why not draft a federal statute stating, "All

wrongful conduct shall be punished by up to 20 years in prison." Such a law would be extremely useful for putting away bad actors. But only those who think that government can do no wrong or who have unlimited confidence in the ethics and good judgment of government officials can fail to see how that statute would be extremely dangerous.

Fortunately, a wide array of individuals and organizations do understand the dangers of overcriminalization and are promoting sensible, non-partisan ideas for criminal justice reform. The Heritage Foundation, National Association of Criminal Defense Lawyers, American Bar Association, American Civil Liberties Union, Cato Institute, Constitution Project, Families Against Mandatory Minimums, Manhattan Institute, National Federation of Independent Businesses and Washington Legal Foundation are all part of this coalition.

Several members of this alliance supported the first House Crime Subcommittee hearing in July 2009 on overcriminalization of conduct and the over-federalization of criminal law. A front-page *New York Times* story late last fall noted that the political Left and Right are coming together to pursue principled criminal-law reform. A recent cover story and editorial in *The Economist* focused attention on the same problems that are the subject of the upcoming hearing. Americans are learning what criminal-law experts have known for some time: We have far too many criminal laws that serve as traps for the innocent but unwary. It's high time for the sort of meaningful, across-the-aisle reforms that Reps. Scott and Gohmert will be considering.

■ **Brian W. Walsh is a senior legal research fellow in The Heritage Foundation's Center.**

Nearing the home stretch

Here are a few thoughts with just over two weeks to go before the general election:

■ Neither of our local congressional candidates – Republican Tom Reed and Democrat Matt Zeller – have a "wow" factor that makes them overly impressive.

Maybe it's because they're relatively young –

Reed is 38 and Zeller is 28 – or

that they're political neophytes (save for Reed's two years as Corning mayor). It

could also be that times are so depressing that there's little to get excited about.

Often times Reed and Zeller are parroting the positions of their parties, meaning if you pay attention to the news at night you can hear the same message from either of these guys the next day.

■ I agree with the observations of others that the pace at which Zeller talks rivals that of former U.S. Rep. Eric Massa. That can be a real detriment since talking fast about complex issues makes it difficult to fully grasp what Zeller is saying at times.

■ Having served in Afghanistan and being a U.S. Army Reserve captain shows when Zeller talks about the war and foreign policy. He's convincing, having lived through combat, and it is by far his strong suit.

In contrast, Reed has no such first-hand experience and responds to war-related questions in general terms. Reed often says he'll rely on the advice of field generals to set policy. (Hmmm ... where have I heard that one before?)

■ No mass has grown under Tom Reed's feet since he started his campaign 14 months ago. Reed says he's logged 71,000 miles touring through the district, which averages out to 5,000 miles a month, or more than 160 miles a day.

■ Both state Senate candidates – Republican Tom O'Mara and Democrat Pam Mackesey – agree Albany is broken and needs to be reformed. The difference is while Mackesey has good ideas, O'Mara actually tried to get many of them passed in his six years in the Democrat-dominated Assembly.

O'Mara solidly backed the effort this year to hold a constitutional convention before its required date of 2017 where many of those reforms could have been acted on.

■ I hope Jason Jordan, Janice Volk and Randy Weaver enjoy campaigning because they have absolutely no shot at winning.

Jordan is an Independence Party candidate and Weaver a is Democrat write-in for the 136th Assembly seat. Both face insurmountable odds of beating Republican Phil Palmesano on Nov. 2.

The same holds true for Volk, a write-in candidate for the 29th Congressional seat, who is up against Republican Tom Reed and Democrat Matt Zeller.

Both Volk and Weaver are write-ins after failing to meet the requirements of the petition process early on.

I can recall only one time, years ago, when a write-in candidate won an election and that was for highway superintendent in some Steuben County town. Otherwise, write-ins don't have a chance.

Like I said, I hope they are having fun.

■ **Joe Dunning is managing editor for The Leader.**

LETTERS

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