University of Massachusetts Law Review

Volume 11 | Issue 1 Article 2

January 2016

The Troubling Problem of Income Inequality: A Few Thoughts

James F. Freeley

UMass Law Review

The Troubling Problem of Income Inequality: A Few Thoughts

James F. Freeley, III

11 U. MASS. L. REV. 6

ABSTRACT

Income inequality has become an important public policy issue in the United States. This Essay examines the issue in a political, economic, and legal context. It argues that the only policy responses that will work to address the underlying trends are ones that put a priority upon hiring people at a living wage and encouraging entrepreneurship and growth at all levels of the economy.

AUTHOR NOTE

B.A., Wesleyan University; M.B.A., F.W. Olin Graduate School of Business at Babson College; J.D., Boston College Law School; Lecturer in Law, University of Massachusetts School of Law-Dartmouth. The author would like to thank the Law Review Editorial Board: Alexander Rovzar, Courtney DaCunha, Richard Aime, Marea Tumber, and Samantha Seserman. The author would also like to thank his editing team members, Scott Baron, Angela Macdonald, and Lauren Friel, for their hard work and dedication through the editing process. The author would finally like to thank the rest of the staff for their hard work and dedication in publishing this volume of the UMass Law Review.

"We often need to lose sight of our priorities in order to see them."
— John Irving, *Trying to Save Piggy Sneed*

I. INTRODUCTION

The United States has been going through a difficult time over the past fifteen years. During this period, there has been the collapse of the dot-com bubble, the September 11 terrorist attacks, two long wars, and the worst economic crisis since the Great Depression. Economic growth has been uneven and restrained over this period, with real gross domestic product (GDP) growing on average at less than 2.5 percent per year.[1] The last figure is troubling when one considers that this tepid growth took place while the federal government ran up deficits of nearly $10 trillion in a ten-year period and the Federal Reserve increased its balance sheet to approximately $4.5 trillion.[2] The national debt is approximately $18 trillion, and it appears likely that the country will continue to spend at high levels for years to come.[3]

While the economy is slowly and steadily healing from the effects of the financial crisis, it is clear that there is still much work to be done. The issues of slow economic growth and income inequality remain important public policy issues. While politicians from both sides of the aisle have different views on how to spur economic growth, they seem to agree, for the most part, on one important point: it is becoming increasingly difficult for the lower and middle classes to maintain their standard of living. This problem has important ramifications for society and our legal system.

This Essay argues that the country's problems are serious and will require a new approach. As the country has continued to move towards an economy that is more service-based, economic growth has waned

---

1 *See* U.S. Dep't of Com., *Gross Domestic Prod. (GDP): Percent Change from Preceding Period (GDP)*, BUREAU OF ECON. ANALYSIS (Oct. 29, 2015), http://www.bea.gov/national/index.htm#gdp.

2 *See* U.S. Dep't of the Treasury, *Debt Position and Activity Report*, *Fiscal Year 2016, October*, TREASURY DIRECT (Oct. 31, 2015), http://www.treasurydirect.gov/govt/reports/pd/pd_debtposactrpt.htm; *see also* Fed. Res., *Factors Affecting Reserve Balances*, FED. RES. STAT. RELEASE (Nov. 5, 2015), http://www.federalreserve.gov/releases/h41/current/.

3 *See* CONG. BUDGET OFF., OPTIONS FOR REDUCING THE DEFICIT: 2014 TO 2023 1-4 (2013), https://www.cbo.gov/content/options-reducing-deficit-2014-2023.

and inequality has increased. The current problems are complex and are due to many reasons, including globalization, technology changes, and federal policies that often favor large companies.[4] These developments have made it increasingly difficult for the lower and middle classes to maintain their standard of living.[5] These trends have left the United States economy in a potentially dangerous place, with a larger percent of the wealth being controlled by a smaller percentage of people. The only policy responses that will work to address these underlying trends are ones that put a priority upon hiring people at a living wage and encouraging entrepreneurship and growth at all levels of the economy. These goals may be difficult to achieve, but are essential if the country hopes to continue to move ahead.

II. WHERE IS THE AVERAGE AMERICAN TODAY?

The United States is a far different place than it was fifty years ago. In the 1960s, it was very common for a family to have one parent working and the other parent staying at home.[6] It is more common today to have both parents working. It is also far more likely that a

---

4 The issue of inequality has become an important public policy issue. *See, e.g.*, JOSEPH E. STIGLITZ, THE PRICE OF INEQUALITY (2013) (arguing in his book that growing inequality endangers the country); *Inequality: Growing Apart*, THE ECONOMIST, (Sept. 21, 2013), http://www.economist.com/news/leaders/21586578-americas-income-inequality-growing-again-time-cut-subsidies-rich-and-invest ("Most of the growth is going to an extraordinarily small share of the population: 95% of the gains from the recovery have gone to the richest 1% of people, whose share of overall income is once again close to its highest level in a century."); Barry Z. Cynamon and Steven M. Fazzari, Inequality, the Great Recession, and Slow Recovery 1 (Oct. 24, 2014) (unpublished manuscript) (on file with the Social Science Research Network), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2205524 ("We argue that higher inequality and the associated demand drag helps explain the slow recovery."); Lawrence Mishel, *Vast Majority of Wage Earners Are Working Harder, and For Not Much More: Trends in U.S. Work Hours and Wages Over 1979-2007*, ECON. POL'Y INST., (Jan. 30, 2013), http://www.epi.org/publication/ib348-trends-us-work-hours-wages-1979-2007/ ("[T]he U.S. economy over the past decade has worked primarily to the advantage of a small sliver of winners. Meanwhile, the vast majority of workers have not fared well – a trend that stretches back to the late 1970s.").

5 *See Inequality: Growing Apart*, *supra* note 4; *see also* Mishel, *supra* note 4.

6 *See*, e.g., Wendy Wang et al., *Breadwinner Moms*, PEW RES. CTR., SOC. & DEMOGRAPHIC TRENDS (May 29, 2013), http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/ (noting that mothers are the sole or primary provider in four-in-ten families).

child will be raised in a single-parent household.[7] Wages have not been keeping up with the cost of living for many in the country, and the lower and middle classes are falling behind.[8] The recent financial crisis has exacerbated these long-term trends.[9]

Housing remains expensive and continues to take up a large percentage of household budgets.[10] The Joint Center for Housing Studies of Harvard University estimates that as of 2011 over forty million households were at least moderately cost burdened, which is defined as paying over 30 percent of their incomes on housing.[11] In some cases, homeowners have mortgages on their homes that are greater than the value of their homes. As of the end of the second quarter of 2013, it was estimated that 14.5 percent of the residential properties in the country with a mortgage had negative equity.[12] Because of the high cost of housing, many people have been moving farther away from major cities.[13] In order to get to work, people either need a car or they take public transportation. The cost of buying a car has become increasingly cost-prohibitive for some. It is not uncommon today to see manufacturers or lenders offering financing options up to seven years or longer to purchase a car. Some car dealers have cars

---

7 *See id.*

8 *See Inequality: Growing Apart, supra* note 4.

9 *See id; see also* CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR., U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2014 5 (2015) (noting that real median household income in 2014 was 6.5 percent lower than in 2007).

10 *See* JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING 2013 (2013), http://www.jchs.harvard.edu/sites/jchs.harvard .edu/files/son2013.pdf.

11 *See id*. at 4 ("At last count in 2011, over 40 million households were at least moderately cost burdened (paying more than 30 percent of their incomes for housing), including 20.6 million households that were severely burdened (paying more than half of their incomes for housing).").

12 *See, e.g.*, Steven C. Johnson, *Homeowners Underwater on Mortgages Falls in Second Quarter: CoreLogic*, REUTERS.COM (Sept. 10, 2013, 8:27 AM), http:/ /www.reuters.com/article/2013/09/10/us-housing-corelogic-idUSBRE9890KH2 0130910 (estimating that 14.5 percent of the residential properties in the country with a mortgage had negative equity).

13 *See, e.g.*, ELIZABETH ROBERTO, COMMUTING TO OPPORTUNITY: THE WORKING POOR AND COMMUTING IN THE UNITED STATES 1-2 (2008), http://www .brookings.edu/research/reports/2008/03/14-transportation-puentes.

and trucks listing for over $30,000.[14] The cost of public transportation is not always cheap.[15]

Other costs associated with raising a family have increased by any objective measure. Health care insurance for families often costs in excess of $15,000 per year, with employers passing on a larger percentage of these costs to their employees each year through higher contributions, copayments, or deductibles.[16] College costs have likewise risen with some private schools charging over $50,000 per year.[17] As tuitions have risen, the federal government and financial institutions have expanded the amount of credit available for educational expenses. The amount of student debt in the United States is in excess of $1 trillion, which is greater than the amount of credit card debt.[18] It is not unheard of for some students coming out of graduate school to have student debt in excess of $100,000, with few job prospects.[19] These students cannot get rid of their debt easily, as current law does not allow these students, in most instances, to

---

14 *See, e.g.*, Chris Woodyard, *Study: Have New Cars Become Unaffordable?*, USATODAY.COM (Feb. 26, 2013, 5:20 PM), http://www.usatoday.com/story/driveon/2013/02/26/bankrate-new-cars-unafforable/1949385/.

15 In Massachusetts, the cost of a commuter rail ticket into Boston can cost over $200 per month when traveling from the suburbs. The fares vary depending upon how far one commutes. For fare information, see the Massachusetts Bay Transportation Authority's website, http://www.mbta.com/fares_and_passes/rail/ (last visited Dec. 1, 2015).

16 The Henry J. Kaiser Family Foundation reported that the average annual health insurance premium for families has grown from $9,068 in 2003 to $16,351 in 2013, which is an 80 percent increase. The worker's contribution increased from $2,412 in 2003 to $4,565 in 2013, which is an 89 percent increase. *See* KAISER FAM. FOUND. ET AL., EMPLOYER HEALTH BENEFITS, 2013 SUMMARY OF FINDINGS (2013), http://kff.org/report-section/2013-summary-of-findings/.

17 The cost of a college education varies greatly. For example, the cost of attendance at Princeton University for 2016-2017 is estimated to be over $50,000 before any award of financial aid. *See, e.g.*, PRINCETON UNIV.: UNDERGRADUATE ADMISSION: FEES & PAYMENT OPTIONS, http://admission.princeton.edu/financialaid/fees-payment-options (last visited Oct. 7, 2015); *see also* NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., PUB. NO. 2015-011, FAST FACTS (2015), http://nces.ed.gov/fastfacts/display.asp?id=76.

18 *See, e.g.*, Kayla Webley, *Why Can't You Discharge Student Loans in Bankruptcy?*, BUSINESSTIME.COM (Feb. 9, 2012), http://business.time.com/2012/02/09/why-cant-you-discharge-student-loans-in-bankruptcy/.

19 *Id.*

discharge their student loans in bankruptcy.[20] These students, in turn, are unable to make large purchases or investments and often delay starting their own families.[21]

Job creation has been slow and steady since the recent financial crisis and has been concentrated in lower-wage and middle-wage industries. It is estimated that 44 percent of the jobs created between February 2010 and February 2014 have been in lower-wage industries.[22] Unfortunately, some public companies have made it more difficult for smaller businesses to compete in some areas (e.g., retail and restaurants). While the official unemployment rate has fallen to 5.1 percent as of September 2015, the so-called U-6 unemployment rate, which takes into account discouraged and underemployed workers, is almost double that level. [23] Other employment metrics such as the labor force participation rate and the employment-population rate have not returned to pre-financial crisis levels.[24] Put simply, the employment situation is far from perfect.

Large financial institutions are controlling more of the economy. The largest ten banks in the United States have assets on their books in the aggregate approaching 60 percent of the GDP of the country.[25] Some of these banks are bigger than they were when the financial crisis occurred. These large financial institutions have a presence in every part of the economy and have the ability to influence policy in unprecedented ways.[26] These large financial institutions have provided financing to companies in the United States and throughout the world. Many major cities have the same restaurants, home improvement

---

20 11 U.S.C. § 523(a)(8) (2012) (requiring the debtor to show undue hardship to discharge the debt). Courts have adopted various tests to determine undue hardship. *See*, *e.g.*, *In re* Bronsdon, 435 B.R. 791, 797-98 (B.A.P. 1st Cir. 2010) (discussing the *Brunner* test and the "totality of the circumstances" test).

21 *See generally* Webley, *supra* note 18.

22 *See Tracking the Low-Wage Recovery: Industry Employment and Wages*, NAT'L EMP. LAW PROJECT (April 27, 2014), http://www.nelp.org/publication/tracking-the-low-wage-recovery-industry-employment-wages.

23 BUREAU OF LAB. STAT., THE EMPLOYMENT SITUATION – SEPTEMBER 2015, 1-2, Table A-15 (2015).

24 *Id.*

25 *Compare* Erik Holm, *Ranking the Biggest U.S. Banks: A New (Old) Entrant in Top 5*, BLOGS.WSJ.COM (Dec. 10, 2014, 9:07 AM), http://blogs.wsj.com /moneybeat/2014/12/10/ranking-the-biggest-u-s-banks-a-new-old-entrant-in-top-5/.

26 *Id.*

stores, office supply stores, pharmacies, clothing stores, appliance stores, computer stores, and sporting goods stores, often with financing from some of these financial institutions.

The result of all of these events is that many people in the lower and middle classes are finding it more difficult to maintain their standard of living.[27] Many people still have substantial personal debt, which further compromises their ability to continue to spend. Put simply, if people do not spend, companies will not hire and economic growth will not return to levels necessary to support a healthy economy.

III. THE FEDERAL GOVERNMENT NEEDS TO ADDRESS ITS DEBT PROBLEM

One thing that most people seem to agree on is that the federal government needs to address its debt problem at some point in time if the country is going to reach its potential.[28] The debt problem affects consumer and business sentiment and may have a negative effect upon future economic growth. The only questions seem to center around when and how the debt problem will be solved. Some people believe that it must be addressed now while others argue that it cannot be solved now because the economy is too fragile.[29]

The national debt is approximately $18 trillion, with most of it incurred in the last fifteen years.[30] Some people estimate that the present value of unfunded liabilities for Social Security, Medicare, Medicaid, and other programs is in excess of $70 trillion.[31] Politicians find it expedient to point to the financial crisis as the cause of the debt

---

27 *See Inequality: Growing Apart*, *supra* note 4; *see also* Mishel, *supra* note 4.

28 *See* CONG. BUDGET OFF., *supra* note 3, at 1-4 (discussing current federal budget and long-term debt projections).

29 *Id.* at 4.

30 *See* U.S. Dep't of the Treasury, *Historical Debt Outstanding – Annual 2000-2015*, TREASURY DIRECT (Oct. 28, 2015), http://www.treasurydirect.gov/govt/reports/pd/histdebt/histdebt_histo5.htm.

31 There are various figures reported regarding the present value calculation of the unfunded liabilities of these programs. The reason for the wide variation is the differing assumptions made regarding the amount of funds coming in and going out over a long period, in some cases in excess of seventy-five years. *See, e.g.*, James D. Hamilton, *Off-Balance-Sheet Federal Liabilities*, 3 CATO PAPERS ON PUB. POL'Y 1 (2014) (calculating the total dollar value of off-balance-sheet commitments at $70 trillion as of 2012).

problem, but the facts belie this assertion.[32] Politicians from both parties have been unwilling to address the real drivers of this debt and instead resort to hyperbole to make their points. They hope that the revenues will be there in the future to pay for these programs. If the federal government does not address the issue, it is possible that the country will have more serious problems in the future.[33]

The problem is actually not a difficult one. The receipts coming in should equal the expenditures going out in the long run. The hard part is recognizing that the federal government cannot use fuzzy math and unrealistic projections. It likewise cannot pass on the financial responsibilities for administering the programs to the states or local governments when the proposed federal funding does not actually pay for the programs.[34] The states then pass on many of the unfunded shortfalls to local governments or individuals (who often pay higher taxes or fees).

The federal government must recognize that it cannot ignore this problem indefinitely. Its goal of attempting to help people, especially the most vulnerable in society, is laudable and absolutely necessary. The problem is that the federal government keeps passing legislation and adopting policies that benefit two groups of people - the largest companies and the poorest and most vulnerable individuals – without a real understanding of how they affect the middle class.[35] As the previous discussion demonstrates, the costs for housing, transportation, health care, and education, which are the major drivers of a family's budget, are rising faster than wages and have been doing so for a long period of time.[36]

The federal government must address its debt problem if it hopes to restore confidence in the economy. It is clear that the deficits and national debt cannot be solved immediately. If interest rates rise, the interest payments needed to service the national debt will increase, resulting in additional budgetary pressures. Once corporate America

---

32 *See* U.S. Dep't of the Treasury, *supra* note 30; *see also* CONG. BUDGET OFF., *supra* note 3, at 1-4.

33 *Id.*

34 For example, some people fear that the Patient Protection and Affordable Care Act ("Obamacare") will place additional burdens on the states due its expansion of Medicaid eligibility.

35 *See, e.g.*, James F. Freeley, III, *National Federation of Independent Business v. Sebelius: The Constitutionality of Health Care Reform and the Spending Clause*, 45 CONNTEMPLATIONS 19 (2013).

36 *See supra* section II.

believes that the federal government is addressing this problem, it should be more willing to make the necessary investments in order to support economic growth. If higher growth returns, tax receipts will increase, which will help the government solve its long-term debt problem. The growing inequality between the rich and the poor, however, complicates these problems, as it is unclear whether demand will return to levels necessary to support long-term growth.

IV. FEDERAL MONETARY POLICY IS NOT A SUBSTITUTE FOR RESPONSIBLE FISCAL POLICY

Many people believe that the Federal Reserve is attempting to do too much through its easy monetary policy. The Federal Reserve has kept its discount rate and target federal funds rate at low levels for years. It also instituted a quantitative easing program, which involved the Federal Reserve buying securities at various maturities, with the goal of providing additional liquidity into the economy.[37] These policies have played a part in inflating asset prices in the economy, such as housing and the stock market. These policies by their design attempt to encourage more business investment. Business investment should then lead to economic growth and hiring by businesses.

The unfortunate part of these policies is that they have disproportionately helped large corporations and the wealthy and have not led to companies hiring at a living wage. Economic growth has been restrained since the recession ended. Moreover, since 44 percent of the jobs created between February 2010 and February 2014 have been in lower-paying industries, it is hard to say that these policies have been a resounding success on the employment front.[38] Proponents of these policies point to how bad the economy would be without these policies.

There is a risk that these policies may cause harm to the economy in the future. Some people argue that these policies will have unintended consequences down the line, including inflation and asset bubbles. They point to the fact that no country has ever become rich by printing money. The Federal Reserve counters by stating that inflation is not a problem and that it can reverse its current policies in an orderly

---

[37] Tim Mullaney, *What Exactly is Quantitative Easing?*, USATODAY.COM (Sept. 18, 2013, 11:54 AM), http://www.usatoday.com/story/money/business/2013/09/18/federal-reserve-quantitative-easing/2831097/.

[38] *See Tracking the Low-Wage Recovery: Industry Employment and Wages*, *supra* note 22.

manner before any harm occurs. Since the unintended consequences of these policies could be serious, it makes sense for the Federal Reserve to begin the process of returning to a more traditional monetary policy as soon as possible. It obviously cannot do this immediately because its balance sheet is large and its policies must be unwound in a systematic way so as to not cause any harm. Furthermore, it must remain flexible and supportive in the event there is further economic weakness.

V. CORPORATIONS NEED TO ADOPT POLICIES THAT RECOGNIZE THAT EMPLOYEES ARE INDISPENSABLE

There is a widening disparity between the rich and the average person today. The top one percent of the population is controlling a larger percent of the wealth generated in the country.[39] The income disparity is also growing. Large corporations continue to pay their top executives large salaries. These executives often take credit for the success of their companies, and they justify their salaries by emphasizing the value that they have created for the shareholders. In contrast, many employees who work for these companies have not seen their salaries rise in the same way.[40]

The United States has a serious employment problem that must be addressed. There are many companies that pay their employees a wage that they cannot live on.[41] These companies have expanded into almost every area of the economy.[42] The argument that these are entry-level jobs is no longer persuasive when one sees that these companies are, in some cases, crowding out small business formation in some areas of the economy. The result of these corporate policies is that far too many people who work for these companies cannot support themselves or their families.[43] When people do not make enough money to live on,

---

39 *See Inequality: Growing Apart*, *supra* note 4.

40 *See* Caroline Fairchild, *Top-Tier CEO Pay Grew Nearly 15 Times Faster Than Worker Pay Last Year*, HUFFINGTONPOST.COM (Oct. 22, 2013, 4:48 PM), http://www.huffingtonpost.com/2013/10/22/ceo-pay-worker-pay_n_4143859.html; *see also* Michael Hiltzik, *CEO-to-Worker Pay Gap is Obscene; Want to Know How Obscene?*, LATIMES.COM (Oct. 20, 2013, 8:00 AM), http://www.latimes.com/business/la-fi-hiltzik-20131020,0,770122.column#azz2mcQRKRFn.

41 *See Tracking the Low-Wage Recovery: Industry Employment and Wages*, *supra* note 22.

42 *Id.*

43 *Id.*

they cannot continue to spend. At some point, economic growth will likely slow, which will necessitate further spending by the federal government. Such spending will exacerbate the current debt problem and will affect future economic growth.

Public corporations need to assess whether they are treating their employees responsibly and fairly. Many public corporations pay employees very low wages with few fringe benefits.[44] The question is not whether public companies have the right to operate this way—they clearly do. The question is whether these companies should be encouraged to change their behavior and to view their employees differently. Corporate responsibility, like individual responsibility, requires an honest assessment. There are numerous retailers, service companies, and other companies that continue to tout how many jobs they create.[45] These companies have many people working for them full-time, yet many of these employees cannot afford to survive on their wages. Their executives often hype how their businesses are doing and report to investors that their earnings are meeting or beating expectations.[46] While these executives and their boards owe fiduciary duties to their companies and shareholders, they also have a responsibility to treat their employees fairly. These executives must ask whether they are acting in a just manner and in the best interests of the country when they pay low wages. Henry Ford understood this problem many years ago. Contrary to popular wisdom at the time, he decided to pay his employees wages far above the then current rates.[47] There is no doubt that many companies will be able to say that they are acting responsibly and fairly.

Corporate responsibility is not an amorphous standard without relevance today. In order to compete successfully, a corporation must have a compelling consumer value proposition and a clear strategy as

---

[44] *Id.*

[45] *See generally*, Henry Blodget, *Dear Walmart, McDonald's and Starbucks: How Do You Feel About Paying Your Employees So Little That Most of Them Are Poor?*, BUSINESSINSIDER.COM (Feb. 16, 2012, 7:28 AM), http://www.businessinsider.com/dear-walmart-mcdonalds-and-starbucks-employees-poor-2012-2 (pointing out the number of employees employed by Walmart, McDonald's, and Starbucks is approximately three million people).

[46] *Id.*

[47] *See, e.g.*, Gus Lubin, *On Henry Ford's 150th Birthday, His Greatest Insight Has Been Tragically Forgotten*, SLATE.COM (July 30, 2013, 12:35 PM), http://www.slate.com/blogs/business_insider/2013/07/30/henry_ford_s_150th_birthday_his_fight_for_higher_wages.html.

to how the company will compete in the marketplace. Its policies and procedures, including its human resource policies, must align with the goal of providing a superior product or service to the customer. When a company fails to consider its employees as important stakeholders, it is almost guaranteeing that it will give less than a superior experience to its customers. Every person has had the experience of going to a business and receiving inferior customer service. In many situations, the employees providing the service are not paid well and feel they are not valued. They feel no loyalty to the company, and ultimately this has an effect on the company's bottom line. Smart companies know this. They realize that their employees are their greatest assets. They understand that they must take care of their employees if they hope to remain competitive.[48]

The economy cannot reach its full potential unless corporate America begins to recognize that it has a key role in solving the inequality problem. The lower and middle classes will not continue to spend to support economic growth if they do not have the wages to do so. If corporate America does not address this problem voluntarily, then it is likely that federal and state governments will continue to respond with laws, such as new minimum wage laws, that attempt to address the growing inequality. These laws, however, will not solve the problem because they would not raise the wage level high enough to address the underlying problem.

VI. FEDERAL AND STATE GOVERNMENTS MUST ADDRESS THE PROBLEMS IN THE ECONOMY AND ADOPT POLICIES THAT ENCOURAGE ENTREPRENEURSHIP

Government has an indispensable role in setting the landscape so that the economy can grow. Jobs are created when entrepreneurs and existing companies innovate or expand the products or services that they offer. While the United States has the largest and most prosperous economy in the world, it still can do more to encourage companies to hire more people at a living wage. It likewise can take steps to foster entrepreneurship at all levels of the economy.

The federal government must adopt policies that encourage corporations to hire more people in the country at a living wage. This

---

48 *See, e.g.*, Brad Stone, *Costco CEO Craig Jelinek Leads the Cheapest, Happiest Company in the World*, BLOOMBERG.COM (June 6, 2013), http://www.bloomberg.com/bw/articles/2013-06-06/costco-ceo-craig-jelinek-leads-the-cheapest-happiest-company-in-the-world.

could be accomplished in a variety of ways, including providing tax breaks to corporations that invest in factories in the United States or pay living wages to their lower and middle level employees.[49] Employees who work full-time for employers should not be living in poverty and dependent upon the government for food, health insurance, and other essentials.

The federal government needs to reform the tax code in order to encourage companies to invest in this country and to compete globally. It should also allow large companies to repatriate some of the money currently being held overseas without significant tax consequences.[50] Corporations need to believe that the economy is healing and heading in the right direction. They need to understand, however, that they are inflicting social costs when they act irresponsibly, fail to hire people at a living wage when they have the ability to do so, and outsource a significant portion of their operations to other parts of the world.[51]

Many people believe that the federal government needs to break up the large banks. They argue that these banks are "too big to fail" and that they have the potential to threaten the entire financial system.[52] Whether the Dodd–Frank Wall Street Reform and Consumer Protection Act[53] and other legislation will actually address many of these concerns remains to be seen. The country needs a strong banking system that supports both large and small businesses. It is important to note that these large banks are not the first place that many entrepreneurs approach when they wants to start a business. These large banks, in some cases, are not interested in providing small

---

49 *See* Mark Landler, *Obama Calls for Tax Breaks to Return Jobs from Abroad*, N.Y. TIMES (Jan. 11, 2012), http://www.nytimes.com/2012/01/12/business/obama-seeks-tax-breaks-to-return-jobs-from-abroad.html?_r=0.

50 Jeanne Sahadi, *The Myth of Corporate America's Offshore Cash*, MONEY.CNN.COM (July 10, 2013, 6:02 AM), http://money.cnn.com/2013/07/10/news/economy/offshore-cash/.

51 The economic costs, including, social costs, that some large banks and corporations caused during the recent financial crisis are incalculable. These banks and corporations have not made the country whole as of this date. Many Americans have lost their jobs, their homes, and their savings. This behavior is not new. One only has to look back to the Enron scandal to see that the country seems to have a new crisis every few years.

52 *See, e.g.*, *U.S. Senators Introduce Bill to Break up Megabanks*, REUTERS.COM (July 11, 2013, 12:49 PM), http://www.reuters.com/article/2013/07/11/financial-regulation-banks-idUSL1N0FH18K20130711.

53 Dodd–Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

business loans. The fact that some of these large banks have received financial support from the federal government, have become bigger than they were during the financial crisis, and have largely not been held accountable for their role in the financial crisis, provides compelling evidence that they are too big and powerful to regulate effectively.

Federal and state governments can also become an integral part of the solution by taking steps to foster entrepreneurship at all levels of the economy. A strong educational system is essential, with an emphasis on basic skills, critical thinking, and training. They also must provide the necessary infrastructure, including roads, bridges, public transportation, and affordable housing. The lifeline of an economy is the constant need to have entrepreneurs offer new and exciting products and services. Large companies, while invaluable, usually do not continue to innovate at the same rate as small companies do. Many major changes that occurred in society came from entrepreneurs who had the vision to challenge traditional ways of doing things. Many of these entrepreneurs were young. Policies should encourage entrepreneurship in all parts of society. Federal and state governments should reward these entrepreneurs with tax benefits, when appropriate, and favorable financing options. They should also offer more scholarship and loan forgiveness programs to people who choose to obtain degrees in areas that show promise for economic growth.

One last point needs to be made. Not all entrepreneurs who innovate necessarily create a net increase in jobs for the economy. Technology often allows individuals and companies to do more with fewer people. Technology has the effect of creating some jobs, eliminating others, and moving positions to other countries.[54] This fact is an important problem for policy makers. Whenever possible, policy makers should encourage companies to engage in more manufacturing and support-related functions in this country.

---

[54] *See, e.g.*, James Bessen, *Don't Blame Technology for Persistent Unemployment*, SLATE.COM (Sept. 30, 2013, 3:31 PM), http://www.slate.com/blogs/future_tense/2013/09/30/technology_isn_t_taking_all_of_our_jobs.html.

VII. HOW DOES GOVERNMENT ENCOURAGE ENTREPRENEURSHIP?

A. Overview

Most businesses in the country are not big businesses. In fact, most businesses in the United States have less than twenty employees.[55] They are the heart and soul of the country and exist in every segment of society. They include small shops, service businesses, restaurants, and professionals such as lawyers and doctors. Unlike large corporations, these small businesses generally compete only in a small geographic area. They are, however, affected by the dealings of large corporations and often have to compete with these organizations in order to succeed. While large corporations, and particularly public corporations, make up a smaller percentage of the total number of businesses operating in the country, they employ many people. Large corporations employ almost sixty million people.[56] They also account for over 50 percent of all wages paid by firms.[57] These large corporations have a significant economic impact on the country.[58] In many cases, they have operations all over the world.

A policy response that treats large and small businesses in the same way will not solve the underlying problems in the economy. Government needs to balance competing interests. It needs to place a greater emphasis on encouraging both large and small businesses to flourish and to hire people at a living wage. Policies that recognize that it is easier to "catch more flies with honey" will likely have a more positive outcome in the long run. Minimum wage laws may, in fact, have the exact opposite effect, especially with very small businesses that are barely getting by or making a small profit.

B. Entrepreneurship Must Exist in all Segments of Society

Entrepreneurship must be encouraged in all segments of society if the country hopes to solve its economic problems. It cannot exist solely in the fields of social media, high technology, defense, biotechnology, and energy. These areas are where venture capital

---

55 *See* ANTHONY CARUSO, STATISTICS OF U.S. BUSINESSES, EMPLOYMENT AND PAYROLL SUMMARY: 2012 (2015), https://www.census.gov/content/dam/Census/library/publications/2015/econ/g12-susb.pdf.

56 *Id.* at Appendix, Table 1.

57 *Id.*

58 *Id.*

firms and other investors often see the best chance to make money, and they are the first to exploit any opportunities. Entrepreneurship can and must exist at every level of society. Federal and state governments must lower the barriers to entry, when applicable, and provide more financing options so that people can start businesses and take care of themselves.

There are reasons why entrepreneurship must exist throughout the economy. First, the economy needs a broad range of products and services to support economic growth for all segments of society. Entrepreneurship is not reserved for the educated and elite. Second, high technology, defense, biotechnology, and energy companies often have business models that are dependent upon governmental financing or funding to survive. For example, some pharmaceutical and medical companies might find it far more difficult to compete if programs such as Medicare and Medicaid did not exist to pay for their products or services. Finally, these companies often do not need large numbers of people to support their operations, and they choose, in some instances, to move a part of their operations abroad.

C. Tax Policy Must Place a Greater Emphasis on Small Business Formation and Operation

Entrepreneurs starting small businesses seldom think about taxes when they are forming their small businesses. They are usually more interested in limiting their personal liability, and in that context, they want to know which entity provides them with the best option to minimize taxes. They are far more interested in making a profit. They know that they do not have to pay income taxes if they do not have any profits to tax. The taxes that they worry about are payroll taxes and those related to running their businesses on a daily basis. Once the entrepreneur starts making money, she realizes quickly that she needs to obtain tax advice. Most tax advice relates to raising or lowering salaries and fringe benefits or to making capital investments.

The biggest fear that a small business owner faces is the possibility that she may not have enough money left at the end of the month to pay the operating expenses. If she does not pay her payroll taxes, she realizes pretty quickly that the federal government will come after her to pay the taxes. A tax deduction or tax credit to a business that has negative earnings or a small profit does little for the government in raising revenue and little for the business owner. In contrast, such tax policy decisions can have a huge impact on large businesses.

Policy makers need to provide targeted tax breaks to small businesses so that they can grow. One possible solution is to have lower payroll and income tax rates for small businesses. No one should argue that small businesses should not pay taxes as they grow. The problem is that some taxes, such as the payroll tax, are regressive and can have a significant impact in suppressing growth and wages in small businesses.[59] Once a small business becomes profitable, it will be in a better place to pay its taxes. Taxing a company prematurely may actually decrease the likelihood that it will succeed.[60]

D. The Student Debt Problem

One final and controversial point needs to be made regarding student debt. The Bankruptcy Code generally does not allow debtors to discharge their student loan obligations in bankruptcy.[61] This law may need to be changed in order to allow young people to move ahead. Many employees and potential entrepreneurs have substantial student debt. In effect, these individuals are burdened with debt payments that they cannot afford to pay. In many cases, they went to school in good faith and with the hope that they would obtain a good job after they graduated. Unfortunately, there are far too many people who have been unable to find a good job after the most recent financial crisis.

The total student debt in the country is in excess of $1 trillion and is rising.[62] This is greater than the total amount of credit card debt.[63] Tuitions are currently unaffordable for many individuals and families. The government must recognize that it will be suppressing future economic growth if it does not address these problems in a meaningful way.

---

[59] *See* Casey B. Mulligan, *The Regressive Tax That Does the Work*, ECONOMIX.BLOGS.NYTIMES.COM (July 22, 2009, 6:47 AM), http://economix.blogs.nytimes.com/2009/07/22/the-regressive-tax-that-does-the-work/.

[60] Small business owners pay a variety of other federal, state, and local taxes, including income taxes, self-employment taxes, sales taxes, excise taxes, gasoline taxes, property taxes, and unemployment insurance. Lowering the marginal tax rates or providing tax incentives could help spur economic growth in these businesses.

[61] 11 U.S.C. § 523(a)(8) (2012).

[62] *See* Webley, *supra* note 18.

[63] *Id.*

VIII. CONCLUSION

While the economy is slowly and steadily healing from the effects of the financial crisis, it is clear that there is still much work to be done. As the country has continued to move towards an economy that is more service-based, economic growth has waned and inequality has increased. The current problems are complex and are due to many reasons, including globalization, technology changes, and federal policies that often favor large companies. These developments have made it increasingly difficult for the lower and middle classes to maintain their standard of living. These trends have left the United States economy in a potentially dangerous place, with a larger percent of the wealth being controlled by a smaller percentage of people. The only policy responses that will work to address these underlying trends are ones that put a priority upon hiring people at a living wage and encouraging entrepreneurship and growth at all levels of the economy. These goals may be difficult to achieve, but are essential if the country hopes to continue to move ahead.