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Income Equality In Utopia

Daniel J Morrissey*

It is an honor to be asked to speak at this symposium honoring the 500th anniversary of Sir Thomas More's¹ classic, *Utopia*.² More was from a distinguished family and held a number of government offices in early modern England, going literally from the ground up starting as London's Commissioner of Water and Sewers and then ultimately becoming the Lord Chancellor of the realm.³

In that capacity, he became a confidant of King Henry VIII.⁴ More, however, was not only a statesman and diplomat, but a renowned Renaissance scholar as well.⁵ Yet in the end, he was executed by that strong-willed Tudor monarch because he would not take an oath of allegiance to him as the Head of the Christian Church in England.⁶

The fine British writer Peter Ackroyd, in his biography of More,⁷ makes a convincing case that Sir Thomas's conscientious defiance was not out of a belief in Papal preeminence.⁸ Rather, it was a principled stand for the unity of the Church and a protest against the erosion of Catholicism's sacramental tradition that makes God's dynamic presence manifest in our lives.⁹ More feared that the Reformation fathers worshipped a more remote Deity who would ultimately vanish from the world of human concern.¹⁰

God's active benevolence for all was thus the Christian message that More believed in—one that had inspired a deep bond among Jesus' early followers.¹¹ The Acts of the Apostles describes them as holding all things in common,¹² causing onlookers to remark with admiration how they loved one another.¹³

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1. See THOMAS MORE, *UTOPIA* 3 (Paul Turner, ed., trans., Penguin Classics 2003) (1515) (discussing More's lifespan from 1478–1535).

2. *Id.*

3. *Id.* at 3.

4. *Id.*

5. *Id.*

6. *Id.*

7. PETER ACKROYD, *THE LIFE OF THOMAS MORE* (1999).

8. Andrew Sullivan, *Public Man, Public Earth*, *THE NEW YORK TIMES* 1 (Oct. 25, 1998), <https://www.nytimes.com/books/98/10/25/reviews/981025.25sulliv.html> (on file with *The University of Pacific Law Review*).

9. *Id.*

10. *Id.*

11. MORE, *supra* note 1, at 91.

12. *Acts* 4:32.

13. TERTULLIAN, *THE APOLOGY OF THE TERTULLIAN* 110 (Wm. Reeve trans., London 1709).

The Utopian state that More created was situated in a remote part of the New World and its inhabitants had never heard of Christianity.¹⁴ But when their first European visitors told the inhabitants of it, he says they eagerly accepted it as most congenial to their way of life.¹⁵ So the aspect of More's Utopia that prompts my remarks—the fair and equal allocations of goods in his model society—owes its provenance, it seems to me, to the author's deeply held faith.

Utopia is a true “common-wealth,” with the accent on both segments of that compound word. Its citizens have little personal property, but they do not have to worry about privation.¹⁶ Instead, the nation's riches are distributed among all who need them.¹⁷ People bring the food they have grown or the goods they have made to the public market where all the Utopians can take what they want without having to pay for it or leave anything in trade.¹⁸ Wholesome meals are freely served to everyone at appointed times in great halls.¹⁹ Families live in similar homes, which they keep in good repair and exchange with one another every ten years.²⁰ More critically contrasts this communal beneficence to his 16th century England where people must provide for themselves or go without.

But how does Utopia's bountiful sharing come about? Well, importantly, no one there is idle. Every able-bodied person must be productive. Farming and the domestication of livestock are general duties and individuals who have particular trades and skills use them to serve common needs.²¹

In addition, no time is wasted making frivolous goods (for instance, citizens wear similar clothing with minor differences for the sexes).²² The Utopians, therefore, have only a six-hour work day leaving plenty of time for pleasurable pursuits, particularly those that involve intellectual or social interaction or enjoyment of games and the arts.²³ That doesn't sound so bad in comparison to our contemporary culture where anxiety, debt, and overwork seem to be our inescapable lot.

More may have coined the term, but he has not been the only Utopian in history. About a century later another famous Englishman of letters, William Shakespeare was, like More, stirred by the founding of the New World to dream up an enchanted island. In one of his most lyrical plays, *The Tempest*,²⁴ the Bard has a courtier, Gonzalo, deliver a soliloquy promising on his arrival how things

14. MORE, *supra* note 1, at 30–31.

15. *Id.*

16. *Id.* at 128.

17. *Id.*

18. *Id.* at 52.

19. *Id.* at 81.

20. *Id.* at 73.

21. *Id.* at 75.

22. *Id.* at 87.

23. *Id.* at 76.

24. WILLIAM SHAKESPEARE, *THE TEMPEST*.

would be if he were put in charge.²⁵ Then there would be: “no riches or poverty . . . no occupation, all men idle . . . and women too, innocent and pure . . . but nature should bring forth of its own kind all abundance to feed my people . . . I would with such perfection govern, sir, to excel the golden age.”²⁶

Indeed, what a better place than America to start all over and create a perfect society? Our Puritan founders were people of such noble aspirations. Their first governor John Winthrop²⁷ gave a sermon as their ship, the *Arabella*, approached Massachusetts Bay proclaiming that their new state would be a “Model of Christian Charity” and a “Shining City on a Hill.”²⁸ This high-minded tradition continued into the 19th century when Americans, spurred on by sects like the Shakers and intellectuals like the Transcendentalists, kept experimenting with new formulae for model communities.²⁹

But our country’s best literary effort in the genre of idealized public reform came in the Gilded Age when a Bostonian journalist Edward Bellamy wrote his classic, *Looking Backward*.³⁰ In the opening passage he develops a memorable metaphor for his society as a “prodigious” coach to which the masses of humanity were harnessed and forced to drag “along a very hilly and sandy road.”³¹ A small number, however, were spared that toil, sitting on comfortable seats at the top of the carriage, enjoying a leisurely view unsullied by the dust and sweat below.³² Yet, those privileged few had no compassion for those beneath them who labored strenuously pulling the vehicle along with ropes.³³

Then, using a Rip Van Winkle conceit, Bellamy’s protagonist falls asleep one night in 1883 and wakes up in the year 2000 to find that the economic structure of Boston and the entire country has totally changed³⁴—gone is the earlier era’s exploitation of working people and the industrial strife that went with it.³⁵ In the early 20th century, America had undergone an economic revolution that rationally and humanely reorganized its productive capacities, paralleling what the country had done politically in 1776.³⁶

25. *Id.* at act 2, sc. 1.

26. *Id.*

27. See JOHN WINTHROP, BRITANNICA ONLINE ENCYCLOPEDIA (2016), <http://www.britannica.com/print/article/645737> (discussing Winthrop’s lifespan from 1587–1649) (on file with *The University of the Pacific Law Review*).

28. John Winthrop, *A Model of Christian Charity*, THE WINTHROP SOCIETY, http://winthropsociety.com/doc_charity.php (last visited Feb. 1, 2016), at 1, 11 (on file with *The University of Pacific Law Review*).

29. For a fine newly published book on these movements, see CHRIS JENNINGS, *PARADISE NOW: THE STORY OF AMERICAN UTOPIANISM* (2016).

30. EDWARD BELLAMY, *LOOKING BACKWARD* (1887) (ebook).

31. *Id.* at 11.

32. *Id.* at 11–12.

33. *Id.*

34. *Id.* at 52.

35. *Id.* at 57–58.

36. *Id.*

A new sense of patriotism had arisen that freed the nation's capital resources from the holdings of private monopolists and consolidated them under public ownership.³⁷ Governing boards responsible to the nation itself took control of the country's businesses, and all Americans came to regard it as their duty to give industrial or intellectual service in much the same way that they contributed to its military defense.³⁸ Correspondingly, the profits of those enterprises came to be shared equally by all the nation's citizens.³⁹

Bellamy's book became one of the best-sellers in the late 19th century, and his ideas engendered considerable enthusiasm, helping fuel the populist and progressive surges that drove a good deal of American politics in the early decades of the 20th century. Reformers, like the New Dealers, continued to develop them in reaction to the vast hardships of the Great Depression.⁴⁰ Their approaches to government spawned a regulatory and welfare state geared toward making the economic system work for all the people, not just an advantaged few.⁴¹

As the generalized prosperity of the post-World War II era began to tail off, reformers revived that approach to deal with the challenges of a stagnant economy.⁴² For instance, in the early 1980s, the AFL-CIO proposed a plan to restart America's productive capacities.⁴³ It would have replaced the country's market-driven economy with a panel of businesspeople, politicians, and union leaders who would direct the revitalization of America's failing industries and the development of new ones.⁴⁴

More recent alternatives have appeared that looked to the strong and successful practices of other countries. Among the best of them was Thomas Geoghegan's *Were You Born on the Wrong Continent*,⁴⁵ which described how most Americans would be better off if our country's economy were run on the German model where employee representatives sit on the boards of companies.⁴⁶ For instance, the hourly wages and benefits of autoworkers there are \$56 while their American counterparts make only \$33.⁴⁷

37. *Id.* at 77.

38. *Id.* at 82–83.

39. *Id.* at 85–86.

40. Thomas J. DiLorenzo, *The Political Economy of National Industrial Policy*, 4 CATO J. 587, 594–95 (1984).

41. *Id.*

42. *Id.* at 598.

43. DiLorenzo, *supra* note 40, at 592.

44. *Id.*

45. THOMAS GEOGHEGAN, *WERE YOU BORN ON THE WRONG CONTINENT?* (2010).

46. Frederick Allen, *How Germany Builds Twice As Much As The U.S. While Paying Its Workers Twice As Much*, FORBES (Dec. 21, 2001), <http://www.forbes.com/sites/frederickallen/2011/12/21/germany-builds-twice-as-many-cars-as-the-u-s-while-paying-its-auto-workers-twice-as-much/#bfe0dd289f7d> (on file with *The University of Pacific Law Review*).

47. *Id.*

We are now 16 years past the millennium when Bellamy's lead character supposedly looked backward on the 20th century and saw how America had become a more economically just country. And 500 years have passed since More spun out his Utopian blueprint for a society whose wealth was shared fairly. How are we doing to achieve these lofty goals?

The euphemistic answer is "not so good." But before I bluntly discuss how growing income inequality and wealth disparities are leading us to a new Gilded Age, it is good to remember a few things. First, it was not for nothing that More named his ideal commonwealth "Utopia"—literally "no place" in classical Greek. Given the pervasive inequities in all human cultures in More's day, we might well ask if his title and the entire work were merely intended as a masterpiece of irony. But let's not forget some wealth-sharing successes that progressives have achieved since Bellamy's day.

On the international front, the United Nations made an ambitious development agenda and already substantial progress has been made on a number of the goals.⁴⁸ For instance, poverty in formerly poor countries like China and India has declined markedly in the last several decades because of industrialization.⁴⁹

In the U.S. we've made some advancements too. We do have a system guaranteeing some income to our seniors. My father was born in 1914 and he told me that before Social Security was enacted in 1935, there were a lot of older Americans who lived in poverty—not so much now. Although today's benefits are not a whole lot, you can still live on them—albeit meagerly. And when President George W. Bush proposed after his reelection to make Social Security voluntary, he quickly retreated because of the swift and strong adverse public reaction.⁵⁰

In the matter of health care, Medicare, which is as close as we have come to socialism in America, has now been around for 50 years. Its sign of success was confirmed to me recently by a friend about my age whose father began his career as a heart surgeon in 1964. In his first year of practice a number of his patients were unable to afford needed procedures, and when they had to have them they or their families were often bankrupted. But the next year, in 1965, Medicare came in and my friend told me his father's senior patients never had to worry again about the costs of their procedures.

As with Social Security, when the Republicans recently talked about cutting back on Medicare benefits, they met a big pushback. It came with this

48. U.N. GAOR, 17th Sess., 4th plen. mtg. at 6–10, 28–31 U.N. Doc. A/RES/70/1 (Sept. 25, 2015).

49. For the author's discussion of that see Daniel J. Morrissey, *Managing the Wealth of Nation: What China and America may have to Teach each other about Corporate Governance*, 68 S.M.U. L. REV. 831, 832–34 (2015).

50. William Galston, *Why the 2005 Social Security Initiative Failed and What it Means for the Future*, BROOKINGS INSTITUTE (Sept. 21, 2007), <https://www.brookings.edu/research/why-the-2005-social-security-initiative-failed-and-what-it-means-for-the-future/> (on file with *The University of the Pacific Law Review*).

incongruous angry slogan: “Keep the government’s hands off my Medicare!”⁵¹ Go figure.

Even many aspects of the much maligned Obamacare have been successes—so much so that the President’s arch critic Donald Trump, while pledging to repeal it, has spoken favorably of the universal health care provided in other countries and has even pledged to replace Obamacare with a system where all citizens will have medical care paid for by the government.⁵²

And thanks to food stamps and meal plans for poor children, kids no longer starve in our country, at least not when school is in session. Even Dr. Ben Carson, who is no fan of government assistance, has admitted that his family subsisted on food stamps when he was a boy.⁵³ One wonders if that program didn’t nourish Dr. Carson, would he have been able to concentrate on his studies and ultimately become a renowned surgeon?

Now for the bad news—and there’s a lot of it. Income inequality and wealth distribution in the developed world during the 20th and into the 21st century has followed a U-shaped curve.⁵⁴ Such disparity started quite high but moved down during the decades after World War II.⁵⁵ In the last 30–40 years, however, it has sharply curved back upward again.⁵⁶

There are many studies that document this—probably the most exhaustive is Thomas Picketty’s 2014 book, *Capital in the 21st Century*.⁵⁷ It’s quite a tome—but I can sum up his survey of the world’s wealth distribution during the last two hundred years in a couple of sentences: it’s always been a good time to be a capitalist; and, the inevitable trend of capitalism is to concentrate wealth in fewer and fewer hands.

Picketty found that the generalized prosperity enjoyed by developed nations during the decades after World War II was a historical anomaly.⁵⁸ Trade unions were strong then; global competition did not challenge the manufacturing prowess of Western Europe and America; and, governments in those countries

51. Matthew Continetti, *Hands Off my Medicare*, THE WEEKLY STANDARD 2 (Aug. 17, 2009), www.weeklystandard.com/print/hands-off-my-medicare/article/240919 (on file with *The University of Pacific Law Review*).

52. Scott Pelley, *Trump Gets Down to Business on 60 Minutes*, CBS NEWS 7 (Sept. 27, 2015), available at www.cbsnews.com/news/donald-trump-60-minutes-scott-pelley/ (on file with *The University of Pacific Law Review*).

53. BEN CARSON & CECIL MURPHEY, GIFTED HANDS: THE BEN CARSON STORY 49 (1990).

54. Ronald Inglehart, *Inequality and Modernization*, FOREIGN AFFAIRS (Dec. 14, 2015), <https://www.foreignaffairs.com/articles/2015-12-14/inequality-and-modernization> (on file with *The University of Pacific Law Review*).

55. *Id.*

56. *Id.*

57. THOMAS PIKETTY, CAPITAL IN THE 21ST CENTURY (2014).

58. *Id.* at 290.

pursued policies like progressive income taxation that facilitated a more equal distribution of wealth.⁵⁹

Since the Reagan/Thatcher era, however, political and economic power have returned to their normal situation of being controlled by a privileged few. On the global scene, the statistics are astounding—62 individuals now have as much wealth as the bottom half of the world's total population, 3.5 billion people.⁶⁰

Here at home, a large number of those plutocrats now come from the ranks of top corporate executives and financiers⁶¹—one salient statistic bears that out. In 1965, the CEOs of America's leading companies made about 20 times the income of their average workers⁶²—now that disparity has grown to 300 times more!⁶³

May I offer just a few examples there—Wal-Mart got quite a bit of publicity last year when it announced it would raise its starting wage to \$9 per hour—its CEO, however, makes almost 1,000 times that, \$26 million.⁶⁴ The CEO of McDonald's in 2014 made \$13.75 million and he got all that without having to fry hamburgers or greet customers with a friendly smile.⁶⁵ McDonald's, however, wasn't doing so well; so he was asked to leave. But don't feel too sorry for him. He departed with a \$40 million severance package.⁶⁶

Another factor figuring prominently in the concentration of wealth is the proliferation of mergers, which in the last year amounted to over \$4 trillion globally.⁶⁷ A few years ago, I was personally involved with one as a consultant to some unhappy shareholders. It involved the combination of two long-time firms in the tool business that were household words—Stanley and Black and Decker.

59. Another fine recent book on all this is ROBERT J. GORDON, *THE RISE AND FALL OF AMERICAN GROWTH* (2016).

60. Patricia Cohen, *An Alarm from Oxfam on a Jump in Inequality*, N.Y. TIMES, Jan. 19, 2016, at B1.

61. Inglehart, *supra* note 54, at 4.

62. *Id.*

63. *Id.*

64. Tom Huddleston, *A Wal-Mart worker making \$9 an hour would have to work 2.8 million hours to match the CEO's pay*, FORTUNE (Feb. 19, 2015), <http://fortune.com/2015/02/19/wal-mart-wage-hike-2-million-hours/> (on file with *The University of Pacific Law Review*); Jenny Che, *Here's How Outrageous the Pay Gap Between CEO's and Workers Is*, HUFFINGTON POST (Aug. 12, 2013), http://www.huffingtonpost.com/entry/ceo-worker-pay-gap_us_55ddc3c7e4b0a40aa3acd1c9 (on file with *The University of Pacific Law Review*).

65. Emily Bryson York, *Promoted to CEO, McDonald's Thomson Saw Pay More than Triple*, CHICAGO TRIBUNE (Apr. 12, 2013), http://articles.chicagotribune.com/2013-04-12/business/chi-with-promotion-to-ceo-pay-for-mcdonalds-thompson-rose-200-20130412_1_ceo-jim-skinner-ceo-don-thompson-mcdonald (on file with *The University of Pacific Law Review*).

66. *McDonald's Will Pay The CEO It Just Fired Another \$3 Million To 'Consult' For The Year*, THINK PROGRESS NEWS (Mar. 5, 2015), <https://thinkprogress.org/mcdonalds-will-pay-the-ceo-it-just-fired-another-3-million-to-consult-for-the-year-3bb45c37bb#6ywmyyvul> (on file with *The University of Pacific Law Review*).

67. Maureen Farrell, *2015 Becomes the Biggest M & A Year Ever*, WALL ST. J. (Dec. 3, 2015), <http://www.wsj.com/articles/2015-becomes-the-biggest-m-a-year-ever-1449187101> (on file with *The University of Pacific Law Review*).

As is often the case in merger, the amalgamation of those two companies resulted in redundancies that allowed the surviving firm to eliminate several thousand employees, thus making it more profitable. But the same logic did not apply to the top officials of the two companies. Neither of them was let go. They both stayed on as co-CEOs—one making \$30 million, and the other \$50 million per year.⁶⁸

All this occurred at a time when there has been a profound change in the American workforce. Industrial employees are now down to 15% of the labor force, with 80% of Americans in service sector jobs.⁶⁹ A small percentage of them are in the highly paid knowledge-economy, which includes those in executive and financial positions, and also those in specialized scientific, technical, and professional fields. The high tech world, however, is not generating a lot of good, new jobs.⁷⁰

As we lawyers know, computers can now do legal research (and medical analysis too), while journalism and education are also on their way to being automated.⁷¹ Consequently, with robots becoming capable of doing even the most sophisticated jobs, many even in highly skilled fields are not seeing their incomes rise.⁷² Those with college and post-graduate degrees still make more than less educated workers, yet their real income during the last decade has remained flat.⁷³ Compare that to the average CEO compensation at the nation's top 500 corporations skyrocketing now to over \$10 million annually.⁷⁴

What we are left with in this service economy is a bunch of precarious jobs like gardeners, hairstylists, and waiters serving the tiny minority who really run things.⁷⁵ An excellent article in *The Atlantic* last summer called “A World Without Work” describes how this disturbing phenomenon is playing out in Youngstown, Ohio.⁷⁶ When once the steel mills there furnished good paying, steady jobs to the town's people—the children of those fortunate post-war

68. The lush paydays continued several years later when Stanley's Chairman retired. Brian Dowling, *Merger Bonus Pushes Retired Stanley Chairman's Pay to \$123 Million*, HARTFORD COURANT (Mar. 11, 2014), available at <http://www.courant.com/business/hc-stanley-black-decker-proxy-2014-20140311-story.html> (on file with *The University of Pacific Law Review*).

69. Inglehart, *supra* note 54, at 4.

70. *Id.* A fine recent article in the Wall St. Journal bears out that discouraging finding. Jon Hilsenrath & Bob Davis, *America's Dazzling Tech Boom Has a Downside: Not Enough Jobs*, WALL ST. J., Oct. 13, 2016, at A1. On an even larger concern, a well-written new book asserts that almost 50% of American jobs may be at risk in the next several decades due to technological change. RYAN AVENT, *THE WEALTH OF HUMANS* (2016).

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

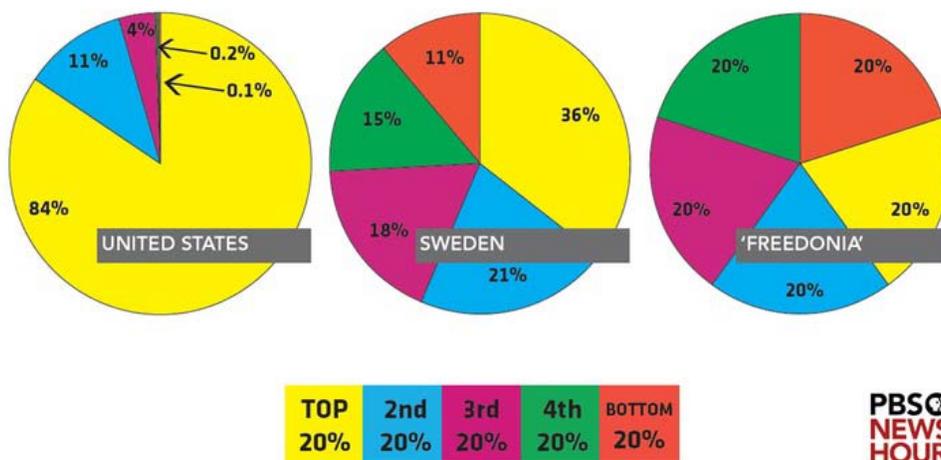
76. Derek Thompson, *A World Without Work*, THE ATLANTIC (Jul. 2015), <http://www.theatlantic.com/magazine/archive/2015/07/world-without-work/395294/> (on file with *The University of Pacific Law Review*).

industrial workers, now middle age themselves, can only get odd jobs that allow them to barely get by.⁷⁷

As an alarming corollary to that, a study by the National Academy of Science late last year revealed that the life-expectancies of less-educated middle-aged whites have been going down due to increased rates of suicide and drug and alcohol addiction.⁷⁸ And with globalization and immigration making Americans compete for jobs with those willing to work for quite less, it is no surprise that politicians like Donald Trump do well advocating protectionist trade and anti-immigration policies.

So how does all this shake out in America today? These pie charts show the percentages of our national riches held by quintiles, each 20% of the population.⁷⁹

The one on the right depicts a society with perfect wealth equality—with each one-fifth of the population holding 20% of the nation's riches.⁸⁰



77. *Id.* at 2.

78. Olga Khazan, *Middle-Aged White Americans are Dying of Despair*, THE ATLANTIC (Nov. 4, 2015), <http://www.theatlantic.com/health/archive/2015/11/boomers-deaths-pnas/413971/> (on file with *The University of Pacific Law Review*).

79. Paul Solman, *Easy as Pie: Inequality in Downloadable Charts*, PBS NEWSHOUR (Sept. 21, 2011), <http://www.pbs.org/newshour/rundown/easy-as-pie-inequality-in-downloadable-charts/> (on file with *The University of Pacific Law Review*).

80. *Id.*

How far are we from that? Look at the one on the left. The wealthiest one-fifth of Americans hold 84% of the nation's assets.⁸¹—the second quintile, just 11%, the third only 4%.⁸² But what is really stunning are the holdings of the bottom 40% of our fellow citizens. The penultimate quintile owns just .2%—only one-fifth of 1% of the nation's resources.⁸³ And that is not even the lowest category. The bottom fifth of our population have just one-tenth of 1% of our country's wealth.⁸⁴ The startling conclusion is that the bottom two-fifths of our people own just three-tenths of 1% of the country's assets.

Are other countries like that? No, many are not. Take a look at one that is a lot better in terms of wealth distribution. The middle pie chart is Sweden. As you can see there, the top quintile has only 36% of the nation's wealth, as opposed to 84% in our country—and the middle three tiers are close to where they should be—at 21, 18, and 15%.⁸⁵ Even the bottom quintile has some economic resources—11% of Sweden's wealth as opposed to one-tenth of 1% in our country.⁸⁶

On the income side, as we've said, ordinary Americans continue to slide downward and the great recession that began in 2008 has contributed heavily to that. But, despite talk of an economic recovery, the average American household now has \$4,000 less in income than before that recent recession—down from \$56,000 to \$52,000.⁸⁷ This is quite a bit less in real terms than at the end of the last century and bears out the grim description I've given you of the ominous trends in our economy.

Throw into this mix the stark situation that most older Americans face in their retirement. As we've said, Social Security isn't much, but at least it is something—because few Americans have traditional defined benefit pensions any more. Self-funded ones have replaced the traditional defined benefit pensions—the so-called 401(k) plans. But in those, the average American between 55 and 64 has just over \$100,000 that must last her for probably several more decades of life. And 30% of Americans over 55 have no retirement savings at all.⁸⁸

On the other end of the life cycle, the situation is just as bleak with the mountains of student debt that many young people carry. I do not have to tell you

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. Mark Gongloff, *45 Million Americans Still Stuck Below Poverty Line: Census*, HUFFINGTON POST (Sept. 16, 2014), http://www.huffingtonpost.com/2014/09/16/poverty-household-income_n_5828974.html (on file with *The University of Pacific Law Review*).

88. *Most Households Approaching Retirement have low Savings*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, May 12, 2015, at 2, 7.

about that burden, which may well restrict the opportunities of twenty and thirty somethings for many decades to come.⁸⁹

It is true, however, that Americans have historically tolerated large disparities in wealth and income. Our country was so bountiful that most believed if they worked hard they, or at least their children, would have a better life. That's been the American dream. But studies show that as most folks have become aware of these unfavorable trends, such optimism has become harder to sustain.⁹⁰ In the same vein, studies now show that there is less upward economic mobility in America today than in countries like Germany and France that have historically had much more stratified societies.⁹¹

Reversing these pernicious tendencies, from a practical point of view, will require initiatives like a high minimum wage; a stronger social safety net of housing, health, and educational subsidies; and, a progressive income tax to pay for those benefits. It might even necessitate a guaranteed national income.⁹² For details on all that, I would refer you to the webpage of presidential candidate Bernie Sanders.⁹³

Yet, as a professor of business law, let me point out another approach that could complement such measures and be even more workable. For several decades, the cause of corporate social responsibility has been growing into a large-scale movement.⁹⁴ It would charge the leaders of America's 7,000 public companies, which hold the lion's share of our country's resources, to use them not just to make profit for their shareholders, but also for the larger interests of society—paying their workers good wages, serving the communities where they do business, and safeguarding the sustainability of our environment.

Over a century ago, Henry Ford espoused that enlightened view when he raised his autoworker's base pay to \$5 per day from the then prevailing wage of

89. *Life Delayed: The Impact of Student Debt on the Daily Lives of Young Americans*, AMERICAN STUDENT ASSISTANCE, http://www.asa.org/site/assets/files/3793/life_delayed.pdf (last visited Mar. 23, 2016) (on file with the *University of Pacific Law Review*).

90. Emily Alpert, *Amid Slow Economic Recovery, More Americans Identify as Lower Class*, LOS ANGELES TIMES (Sept. 18, 2013), <http://articles.latimes.com/2013/sep/15/local/la-me-lower-class-20130916> (on file with *The University of Pacific Law Review*).

91. Julia B. Isaacs, *International Comparisons of Economic Mobility*, The Brookings Institution 2-3, http://www.brookings.edu/~media/research/files/reports/2008/2/economic-mobility-sawhill/02_economic_mobility_sawhill_ch3.pdf (last visited Mar. 23, 2016) (on file with *The University of Pacific Law Review*).

92. Judith Shulevitz, *It's Payback Time for Women*, N.Y. TIMES (Jan. 8, 2016), <http://www.nytimes.com/2016/01/10/opinion/sunday/pay-back-time-for-women.html> (on file with *The University of the Pacific Law Review*). On the issue of a guaranteed national income, see Michael Lind, *Can You Have a Good Life if You Don't Have a Good Job?*, N.Y. TIMES, Sept. 16, 2016, at Sunday Review, 1.

93. *Bernie Sanders on the Issues*, BERNIESANDERS.COM, www.bernieanders.com/issues (last visited Feb. 2, 2016).

94. See Daniel J. Morrissey, *The Riddle of Shareholder Rights and Corporate Social Responsibility*, 80 BROOKLYN L. REV. 353 (2015).

\$2.⁹⁵ When challenged by shareholders who claimed his business policies were too philanthropic he defended them with this statement: “My ambition . . . is to employ still more men; to spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this we are putting the greatest share of our profits back into the business.”⁹⁶

Ford didn’t win that fight, but he set a standard that should be the norm today. The Securities and Exchange Commission, which has the statutory authority to mandate disclosures from public companies, should exercise its power toward that end.⁹⁷ It ought to compel those businesses to state in their public filings, as many firms now voluntarily do, the policies they have adopted to further the larger social and environmental interests of society. Just as the disclosure of pro bono activity that many state bars mandate from their lawyers encourages such beneficial activity in our profession,⁹⁸ such required corporate reporting would likewise spur large businesses to do the good work that many now expect from them.

If that exercise of “soft power” fails to generate a universal corporate culture of social responsibility, the law could order that standards compelling such behavior be set. They could then be enforced by an audit process similar to what is now required for the financial statements of public companies.⁹⁹

American liberalism has advanced ample justifications for such progressive programs. Perhaps the best was formulated by the political philosopher John Rawls. He set up a thought experiment where everyone would start out behind what he called the “veil of ignorance,” unaware of how fortunate or hapless their state in life would be.¹⁰⁰ Anyone, therefore, could find herself in an ill-fated situation when she left this original position.¹⁰¹

With such uncertainty about one’s lot in life, Rawls posited that everyone would only assent to a social contract where no inequalities would be allowed unless they benefited the least advantaged.¹⁰² In other words, it seems Rawls was using self-interest to justify his consensus Utopia. If people did not know the

95. Tim Worstall, *The Story of Henry Ford’s \$5 a Day Wages: It’s Not What You Think*, FORBES (Mar. 4, 2012), <http://www.forbes.com/sites/timworstall/2012/03/04/the-story-of-henry-fords-5-a-day-wages-its-not-what-you-think/#f1ed8981c96d> (on file with *The University of Pacific Law Review*).

96. *Dodge v. Ford*, 170 N.W. 668, 671 (1919).

97. *See* 17 C.F.R. § 229.101 (containing the SEC’s requirements for the narrative disclosure in registration statements and other reports that must be filed with it).

98. *Reporting of Pro Bono Service*, AMERICAN BAR ASSOCIATION (June 16, 2015), <http://apps.americanbar.org/legalservices/probono/reporting/pbreporting.html> (on file with *The University of Pacific Law Review*).

99. *See* 17 C.F.R. § 210.101 (1972) (containing the requirements for financial statements that must be filed in registration statements and other reports with the SEC).

100. JOHN RAWLS, *A THEORY OF JUSTICE* 16 (Otfried Höffe, ed., Joost den Haan trans., Brill 2013) (1971).

101. *Id.*

102. *Id.*

situations they would be born into, they would hedge their bets by agreeing only to a social order where everyone was treated fairly.¹⁰³

Yet, perhaps Rawls's ultimate motive was more altruistic—to set up a universal community of empathy in line with Kant's categorical imperative and the golden rule and where everyone would feel a bond with others, particularly those who do not enjoy privileged positions.¹⁰⁴ Going back to religion, one might again find roots for all that in what we could call a biblical socialism—ideas found not only in the Hebrew and Christian Scriptures, but in the teachings of other great faiths as well. At core they all seem to understand that there is something so deeply meaningful about caring for others that we might even understand it as a Divine Mandate.

This, I believe, is what moved More to create his Commonwealth of love. His personal story, however, does not have a happy ending, at least in the short term. Henry VIII brooked no dissent from his absolute authority. So while mounting the scaffold at the Tower of London, Sir Thomas, ever a man of good humor, shared several wisecracks with his executioner. But it was perhaps his Utopian vision of human fulfillment that More finally had in mind as he knelt there and declared, “I die the King's good servant, but God's first.”¹⁰⁵

103. *Id.* at 23.

104. *Id.* at 24.

105. JAMES MONTI, *THE KING'S GOOD SERVANT BUT GOD'S FIRST: THE LIFE AND WRITINGS OF SAINT THOMAS MORE* (1997).