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The Over-Consumption Myth and Other Tales of Economics, Law, and Morality

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THE OVER-CONSUMPTION MYTH AND OTHER TALES OF ECONOMICS, LAW, AND MORALITY

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INTRODUCTION

As American families sink deeper into debt, they have endured non-stop criticism from multiple quarters. Economists and sociologists have set the pace, describing families' collective lust for goods they could easily forgo. Powerful politicians and the popular press have picked up the theme, chiding families for their profligate ways. The accusations are sharp, the assertions are confident and unambiguous, and the tone of condemnation is unmistakable.

Economist Robert Frank claims that America's newfound "luxury fever" forces middle-class families "to finance their consumption increases largely by reduced savings and increased debt."[1] Documentary filmmaker John de Graaf and Duke Economics Professor Thomas Naylor explain in *Affluenza: The All-Consuming Epidemic*, "It's as if we Americans, despite our intentions, suffer from some kind of Willpower Deficiency Syndrome, a breakdown in affluenza immunity."[2] They assert that Americans have a new character flaw—"the urge to splurge."[3] Economist Juliet Schor echoes the theme, explaining that American families are buying "designer clothes, a microwave, restaurant meals, home and automobile air conditioning, and, of course, Michael Jordan's ubiquitous athletic shoes, about which children and adults both display near-obsession."[4]

Senator Orrin Hatch (R-UT), a senior United States Senator, pushes the same agenda. He explains that millions of Americans are bankrupt or near-

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* Leo Gottlieb Professor of Law, Harvard Law School. Many of the ideas and research for this paper are drawn from ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE CLASS MOTHERS AND FATHERS ARE GOING BROKE (2003). I am grateful to my co-author for her work on the book and for her generous permission to borrow from that work for the F. Hodge O'Neill Lecture. Thanks are also due for Basic Books for their permission to reprint portions of the book. I appreciate Alex Warren's careful work managing the complex databases involved in this work.

1. ROBERT H. FRANK, LUXURY FEVER: WHY MONEY FAILS TO SATISFY IN AN ERA OF EXCESS 45 (1999).

2. JOHN DE GRAAF, DAVID WAAN & THOMAS H. NAYLOR, AFFLUENZA: THE ALL-CONSUMING EPIDEMIC 13 (2001).

3. *Id.*

4. JULIET B. SCHOR, THE OVERSPENT AMERICAN: UPSCALING, DOWNSHIFTING, AND THE NEW CONSUMER 11 (1998).

bankrupt because "they run up huge bills and then expect society to pay for them."[5] He is joined by Federal Judge Edith Jones, long-rumored to be a potential Bush appointee to the Supreme Court. She asserts that "[b]ankruptcy is increasingly seen as a big 'game,' with the losers being those who live within their means, while the bankrupts pursue more interesting and carefree lives."[6]

The popular press sounds the same notes. *Newsweek* ran a multi-page cover story about Americans drowning in debt.[7] The reason for families' distress?: "Frivolous shopping is part of the problem: many debtors blame their woes squarely on Tommy, Ralph, Gucci, and Prada."[8] *Money* magazine focused on the home. "A generation or so ago . . . [a] basic, 800-square-foot, $8,000 Levittown box with a carport was heaven. . . . By the 1980s, the dream had gone yupscale. Home had become a 6,000-square-foot contemporary on three acres or a gutted and rehabbed townhouse in a gentrified ghetto."[9]

The drumbeat shows no signs of letting up. Critics heap scorn on how Americans buy food,[10] clothes,[11] cars,[12] shoes,[13] appliances,[14] and vacations.[15]

And what have Americans gotten for all their spending? Professor Schor cites "competitive spending" as a major contributor to "the deterioration of public goods" such as "education, social services, public safety, recreation, and culture."[16] Professor Frank sums it up: "The dogged pursuit for more" accounts for Americans' "overload, debt, anxiety, and

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5. 147 CONG. REC. S1,934 (daily ed. Mar. 7, 2001) (statement of Sen. Hatch).

6. Judge Edith H. Jones & Todd J. Zywicki, *It's Time for Means-Testing*, BYU L. REV. 177, 218 (1999).

7. Daniel McGinn, *Maxed Out*, NEWSWEEK, Aug. 27, 2001.

8. *Id*. at 37.

9. Walter L. Updegrave, *How Are We Doing? So Far, So Good. But Prosperity in the '90s Means Meeting Seven Basic Goals*, MONEY, Fall 1990, at 20.

10. "City streets and even suburban malls sport a United Nations of restaurants. . . . Eating out used to be a special occasion. Now we spend more money on restaurant food than on the food we cook ourselves." DE GRAAF, *supra* note 2, at 28.

11. McGinn, *supra* note 7, at 37.

12. "People's expectations are much higher. They want amenities—power steering, power brakes as standard, premium sound systems." DE GRAAF, *supra* note 2, at 25–26.

13. Schor, *supra* note 4, at 11.

14. Appliances "that were deemed luxuries as recently as 1970, but are now found in well over half of U.S. homes, and thought of by a majority of Americans as necessities: dishwashers, clothes dryers, central heating and air conditioning, color and cable TV." DE GRAAF, *supra* note 2, at 28.

15. A generation ago, the dream vacation was a modest affair: "Come summer, the family piled into its Ford country wagon (with imitation wood-panel doors) and tooled off to Lake Watchamasakee for a couple of weeks." Now, laments the columnist, things have changed. "The rented cabin on the lake gave way to a second home high on an ocean dune." Updegrave, *supra* note 9, at 20.

16. Schor, *supra* note 4, at 21.

waste."[17] When it comes to money, Americans' profligate spending has dug them into a hole from which they may never recover. Or so say the critics.

The Family Balance Sheet

The Over-Consumption Story gets a big boost from current economic data on the family. First, families have more to spend than a generation ago.[18] A profound change has swept the nation as hundreds of thousands of mothers marched into the workforce year after year. Over the course of a few decades, the change has been nothing short of revolutionary. As recently as 1976, a married mother was more than twice as likely to stay home with her children as to work full-time.[19] By 2000, those figures had almost reversed: The modern married mother is now nearly twice as likely to have a full-time job as to stay home.[20] Mothers are also going back to work much sooner after their children are born.[21] A mother with a three-month-old infant in 2001 is more likely to be working outside the home than was a woman with a five-year-old child in the 1960s.[22] The transformation can be felt in other ways as well. In 1975 only 31% of working women were back at their jobs within six months of giving birth to their first child. Today, that figure is higher than 52%.[23]

As a result of these changes, middle class families have higher incomes than ever before.[24] At a time when men's real wages (inflation adjusted) have risen by about 1 percent, women's shift into paid work has boosted total median family income by about 75%.[25] Compared with families in

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17. DE GRAAF, *supra* note 2, at back cover.

18. *See* Figure 1: Median Family Income, 1970–2003.

19. Calculated from U.S. CENSUS BUREAU, HISTORICAL INCOME TABLES—FAMILIES, CURRENT POPULATION SURVEY, ANNUAL DEMOGRAPHIC SUPPLEMENTS, TABLE F-14: WORK EXPERIENCE OF HUSBAND AND WIFE—ALL MARRIED-COUPLE FAMILIES, BY PRESENCE OF CHILDREN UNDER 18 YEARS OLD AND MEDIAN AND MEAN INCOME: 1976 TO 2000, *at* http://www.census.gov/hhes/income/histinc/f14.html (last visited Nov. 1, 2004).

20. *Id*.

21. *Id*.

22. *Id*.

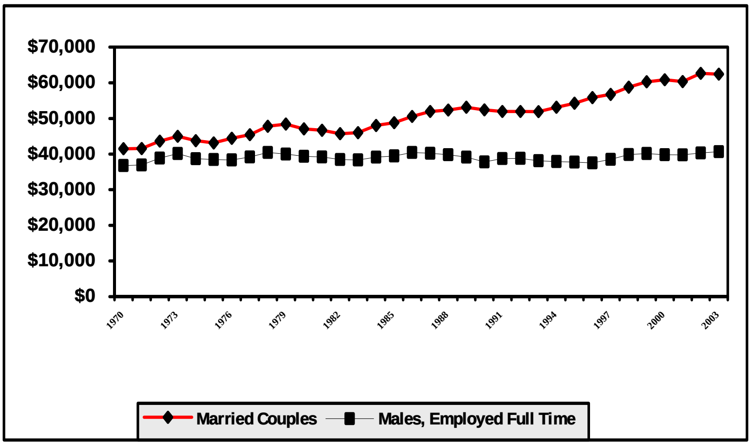
23. KRISTIN SMITH ET AL., U.S. CENSUS BUREAU, MATERNITY LEAVE AND PATTERNS: 1961–1995, at 15 tbl.I (2001).

24. Poorer, less-educated women have seen small gains in real wages over the past generation. Wealthy women have enjoyed considerable increases, but those gains were complemented by similar increases in their husbands' rapidly rising incomes. Both women and men who did not finish high school saw declines in real wages over the past twenty years. By contrast, among college graduates, women's earnings have increased 30% since 1979, while men's earnings have increased by 17%. U.S. DEP'T OF LABOR, HIGHLIGHTS OF WOMEN'S EARNINGS IN 2000, REPORT 952, at tbl.15 (2001).

25. Median earnings, which are the best measure of middle-class wages, have risen less than 1%

the early 1970s, today's families have more to spend, and the data suggest they have done just that—spent their new income.

Figure 1: Median Family Income, 1970–2003, Adjusted for Inflation



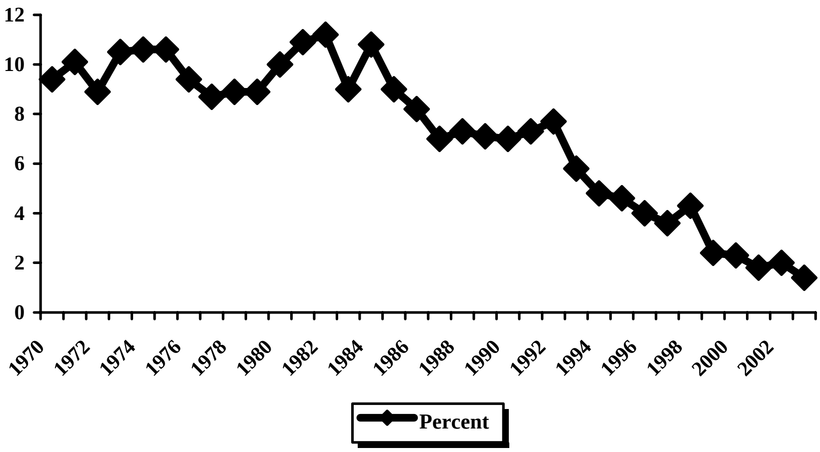
[Source: U.S. Census Bureau]

Even as family incomes have risen dramatically over the past generation, American families have decreased the amounts they put away. Family savings in the United States have declined markedly from the early 1970s to the early 2000s, with families putting away a shrinking fraction of their take-home pay.[26]

for men since the early 1970s, while women's earnings have increased by more than one-third. U.S. CENSUS BUREAU, HISTORICAL INCOME TABLES—PEOPLE, CURRENT POPULATION SURVEY, ANNUAL DEMOGRAPHIC SUPPLEMENTS tbl.P-36, *available at* http://www.census.gov/hhes/income/histinc/incperdet.html (last visited Jan. 26, 2005).

26. *See* Figure 2: Savings Portion of Disposable Income, 1970–2003.

Figure 2: Savings Portion of Personal Disposable Income, 1970–2003



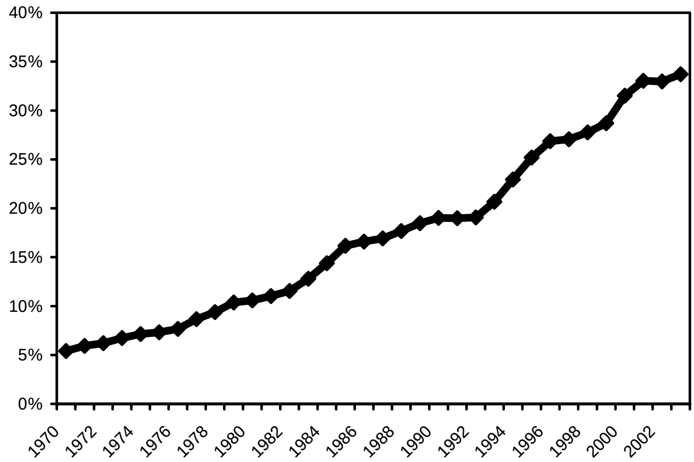
[Source: Bureau of Economic Analysis]

These data demonstrate that families are spending an ever-larger fraction of what they earn. They spend now, saving less for future purchases or as insurance against hard times.

But families are not just spending more of what they earn, they are also spending what they have not earned. Over the space of a single generation, American families have transformed from a nation of savers to a nation of spenders. As savings have fallen, debt has risen. A generation ago, the typical family owed about 3% of its annual income in consumer debt (meaning non-mortgage debt such as car loans and credit cards).[27] Today, debts have risen dramatically.

27. SMR RESEARCH CORPORATION, THE NEW BANKRUPTCY EPIDEMIC: FORECASTS, CAUSES, AND RISK CONTROL 14, 94 (2001); *see also* ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE CLASS MOTHERS AND FATHERS ARE GOING BROKE 113 fig.5.3, 224 n.30.

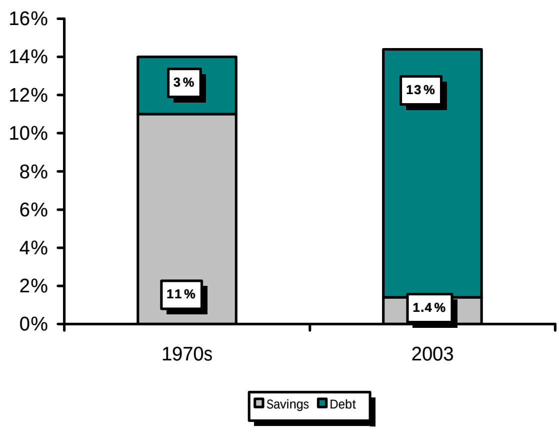
Figure 3: Consumer Debt as a Percentage of Income, 1970–2003



[Sources: U.S. Census Bureau, Federal Reserve Bank]

Increased spending is taking its toll on American families in the form of less savings and more debt. The reversal of their economic balance sheets is evident when savings and debts are put together.

Figure 4: Savings/Credit Card Debt, 1970s–2000s



[Source: U.S. Census Bureau, Federal Reserve Bank]

Increased income has not saved the family balance sheet. The reversal in spending patterns—Americans are now spending more than they earn—has taken a terrible toll on American families. Today there are five times more families filing bankruptcy than in the early 1980s.[28] Home foreclosures have more than tripled in less than 25 years.[29] Nearly half of the families with credit cards report that they have no money to make more than a minimum monthly payment on their outstanding credit card bills.[30] One in every three families in the United States with an income above $35,000 reports owing medical bills that they cannot pay.[31]

The financial distress documented by these numbers hits hard in the middle class. It is homeowners—people who once saved money for a down payment, who showed that they had steady enough incomes to make monthly payments, and who survived the most rigorous credit screen imposed in consumer financial markets—who lose their houses to foreclosure. It is people in the middle—not the richest or the poorest—who accumulate the most debt on their credit cards.[32] It is middle class families who seek relief in the bankruptcy courts.[33]

28. Calculation from Administrative Office of United States Courts, 1980–2003.

29. The proportion of mortgages in foreclosure proceedings at the end of the quarter increased from 0.31% in 1979 to 1.1% in 2002, an increase of 255%. U.S. Mortgage Bankers of America Foreclosure at End of Quarter (2002) (unpublished data). For homeowners who were initially backed by FHA single-family mortgage insurance between 1982 and 2000, married couples with children were, on average, 39% more likely to undergo foreclosure by 2002 than married couples without children. Single parents were 28% more likely than single individuals without children. U.S. Dep't of Housing and Urban Development (HUD), FHA Single-Family Mortgage Insurance Cumulative Number and Percent of Foreclosures 1982–2002 (unpublished data).

30. Cambridge Consumer Credit Index Economic Analysis (Mar. 5, 2004), *available at* http://www.cambridgeconsumerindex.com ("Those making just the minimum payment or no payment at all fell from 46% a year ago to 42%. Most significantly, when asked why they were taking on new debt, 49% of consumers said it was because they did not have enough money to pay their bills, up from 44% in March 2003.").

31. Sara R. Collins et al., *The Affordability Crisis in U.S. Health Care: Findings from the Commonwealth Fund Biennial Health Insurance Survey* xii (Mar. 2004), *at* http://www.cmwf.org (reporting 32% of Americans aged 19-64 with incomes above $35,000 have outstanding medical bills they cannot pay, have been contacted by collection agents on behalf of health care providers, have medical debt being paid off over time, or have other signs of distress in paying medical bills).

32. *See* DEMOS REPORT, BORROWING TO MAKE ENDS MEET: THE GROWTH OF CREDIT CARD DEBT IN THE '90S, at 10 (2003). For those who have any credit card debt, debt levels climb as income climbs. But as income climbs, the likelihood of carrying credit card debt drops off. Credit card debt is a continuum. Families with the lowest incomes are more likely to carry credit card debt, but the amounts are small; while families with the highest incomes are less likely to have a balance, although those who do carry balances are likely to owe the most. The families in the middle are likely both to carry debt and to owe substantial sums.

33. When measured by enduring criteria such as education, occupation or homeownership, 91.8% of the families filing for bankruptcy would be deemed middle class. Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115 (2003).

These data compose a deeply disturbing picture. Tens of millions of American families—middle class people with decent educations and respectable occupations—are living on a financial cliff. Some will hang on, and others will plunge over the edge as they deal with the anxiety of unplanned emergencies and unpaid bills.

How They Spend

If families are making more money than ever and are in financial trouble, surely the critics are right: Over-consumption is rife in the land. But intuition and anecdotes are no substitute for hard data. Before the Over-Consumption Story takes its place among well-documented facts, it might be worthwhile to look at some actual data on spending.

For more than a century, the federal government has been collecting data on household spending. It is possible, for example, to track how much Americans have spent on distilled spirits dating back to the 1850s.[34] For the analysis here, the focus is on comparative spending changes in a single generation, sorted by spending categories and family size, with no adjustments for the increase in family income.[35] If families really are blowing their paychecks on designer clothes and restaurant meals, then the expenditure data should show that today's families are spending more on these frivolous items than ever before.[36]

The Over-Consumption Story is widely told, but the hard numbers point in a very different direction. Start with clothing: The stories are legion about how Americans overspend on clothing. The malls are overflowing, Adidas and Nike clad the feet of every teenager, and designer shops rake in profits selling nothing but underwear or sunglasses. Even little children's clothes now carry hip brand names, and babies sport "GAP" or "YSL" on their t-shirts and sleepers.

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34. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1913, at 516 tbl.289 (1913).

35. The Bureau of Labor Statistics maintains the Consumer Expenditure Survey (CES), a periodic set of interviews and diary entries, to analyze the spending behavior of over 20,000 consumer units. For much of our analysis we compare the results of the 1972–1973 CES with those of the 2000 CES. In some instances, we use pre-published tables from the 1980 or the 2000 survey in order to use the most comparable data available. My co-author Amelia Warren Tyagi and I gratefully acknowledge the valuable assistance of Eric Keil, an economist at the Bureau of Labor Statistics, in locating and interpreting these data.

36. All comparisons of expenditures and income are adjusted for inflation using the Inflation Calculator produced by the U.S. Department of Labor, Bureau of Labor Statistics, *at* www.bls.gov/cpi/home.htm (last visited Jan. 26, 2005).

And yet, when it is all added up, including the Tommy sweatshirts and Ray-Ban sunglasses, the average family of four today spends 21% *less* (inflation adjusted) on clothing than a similar family did in the early 1970s. How can this be? What the finger-waggers have forgotten are the things families *don't* spend money on anymore. No more rushing off to Stride Rite to buy two new pairs of sensible leather shoes for each child every three months (one for church and one for everyday), plus a pair of sneakers for play. Today's toddlers often own nothing but a pair of $5 tennis shoes from Wal-Mart. Suits, ties, and pantyhose have been replaced by cotton trousers and knit tops, as "business casual" has swept the nation. New fabrics, new technology, and cheap labor have lowered prices. Discounters like Target and Marshall's have popped up across the country, replacing the full-price department stores of a generation ago. The differences add up. In 1973, Sunday dresses, wool jackets, and the other clothes for a family of four claimed nearly $750 more a year from the family budget than all the name-brand sneakers and hip t-shirts today's families are buying.[37]

If Americans are not blowing their paychecks on clothes, then they must be overspending on food. Designer brands have hit the grocery shelves as well, with far more prepared foods, high-end ice creams, and exotic juices. Families even buy bottles of water, a purchase that would have shocked their grandparents. Besides, who cooks at home anymore? With Mom and Dad both tied up at work, Americans are eating out (or ordering in) more than ever before.

The over-consumption camp has it right, but only to a point. The average family of four spends more at restaurants than it used to, but it spends less at the grocery store—a lot less.[38] Families are saving big bucks by skipping the T-bone steaks, buying their cereal in bulk at Costco, and

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37. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CONSUMER EXPENDITURE SURVEY: INTERVIEW SURVEY, 1972–1973, at tbl.5 (1997) [hereinafter BLS INTERVIEW SURVEY]; BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CONSUMER EXPENDITURES IN 2000, at tbl.4 (2002) [hereinafter CONSUMER EXPENDITURES IN 2000] (data are for four-person families); BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CONSUMER EXPENDITURE SURVEY tbl.4 (2002), *available at* www.bls.gov/cex/2002/Standard/cusize/pdf5/18/04 [hereinafter CONSUMER EXPENDITURE SURVEY, 2002]; *see also* Mark Lino, *USDA's Expenditures on Children by Families Project: Uses and Changes Over Time*, 13 FAM. ECON. & NUTRITION REV. 81–86 (2001). According to USDA estimates, the total amount of money an average family will spend on clothing for a child between birth and age eighteen decreased by approximately 38% between 1960 and 2000.

38. BLS INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURES IN 2000, *supra* note 37, at tbl.4; CONSUMER EXPENDITURE SURVEY, 2002, *supra* note 37, at tbl.4; *see also* Eva Jacobs & Stephanie Shipps, *How Family Spending Has Changed in the U.S.*, 113 MONTHLY LAB. REV. 20–27 (1990).

opting for generic paper towels and canned vegetables.[39] Those savings more than compensate for all that restaurant eating—so much so that today's family of four is actually spending 22% *less* on food (at-home and restaurant eating combined) than its counterpart of a generation ago.[40]

Discussing the expense of outfitting the home, the authors of *Affluenza* rail against appliances "that were deemed luxuries as recently as 1970, but are now found in well over half of U.S. homes, and thought of by a majority of Americans as necessities: dishwashers, clothes dryers, central heating and air conditioning, color and cable TV."[41] These handy gadgets may have captured a new place in Americans' hearts, but they aren't taking up much space in our wallets. Manufacturing costs are down, and durability is up. When the microwave oven, dishwasher, and clothes dryer are combined with the refrigerator, washing machine, and stove, families are actually spending 44% *less* on major appliances today than they were a generation ago.[42]

That is not to say that middle-class families never fritter away any money. A generation ago no one had cable, big-screen televisions were a novelty reserved for the very rich, and DVD and TiVo were meaningless strings of letters. So how much more do families spend on home entertainment, premium channels included? They spend 23% more—an extra $170 annually.[43] Computers add another $300 to the annual family budget.[44] But even that increase looks a little different in the context of other spending. The extra money spent on cable, electronics, and computers is more than offset by families' savings on major appliances and household furnishings alone.

The same balancing act holds true in other areas: the average family spends more on airline travel than it did a generation ago, but it spends less on dry cleaning; more on telephone services, but less on tobacco; more on pets, but less on carpets.[45] When the numbers are all added up,

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39. *See* sources cited *supra* note 38.

40. *See* sources cited *supra* note 38.

41. DE GRAAF, *supra* note 2, at 28.

42. BLS INTERVIEW SURVEY, *supra* note 37, at tbl.5; BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CONSUMER EXPENDITURE SURVEY 2000, at tbl.1400 (2000) [hereinafter CONSUMER EXPENDITURE SURVEY 2000] (data are for four-person families); CONSUMER EXPENDITURE SURVEY, 2002, *supra* note 37, at tbl.4.

43. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURE SURVEY 2000, *supra* note 42, at tbl.1400; CONSUMER EXPENDITURE SURVEY, 2002, *supra* note 37, at tbl.4 (Electronics comparison includes expenditures on televisions, radios, musical instruments, and sound equipment; computer calculation includes computer hardware and software.).

44. *See* sources cited *supra* note 43.

45. For example, in 2000 the average family of four spent an extra $290 on telephone services. On the other hand, the average family spent nearly $200 less on floor coverings, $210 less on dry

increases in one category are offset by decreases in another. In other words, there seems to be about as much frivolous spending today as there was a generation ago.

There is no evidence of any "epidemic" in overspending—certainly nothing that could explain a 255% increase in the foreclosure rate, a 430% increase in the bankruptcy rolls, and a 570% increase in credit card debt.[46] A growing number of families are in terrible financial trouble, but no matter how many times the accusation is hurled, Prada and HBO are not the reason.

Where Did the Money Go?

If they have more money and are not spending themselves into oblivion on designer water and DVDs, how did middle-class families get into so much financial trouble? The answer starts, quite literally, at home.

It would be easy to pile cliché on cliché about the home, but this observation should suffice: the home is the single most important purchase for the average middle-class family. To the overwhelming majority of Americans, home ownership stands out as the single most important component of "the good life."[47] Homes mark the lives of their children, setting out the parameters of their universe. The luck of location will determine whether there are computers in their classrooms, whether there are sidewalks for them to ride bikes on, and whether the front yard is a safe place to play. A home will consume more of the family's income than any other purchase—more than food, more than cars, more than health insurance, and more than child care.

As anyone who has read the newspapers or purchased a home knows, it costs a lot more to buy a house than it used to.[48] What is easy to forget,

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cleaning and laundry supplies, and $240 less on tobacco products and smoking supplies. BLS INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURE SURVEY 2000, *supra* note 42, at tbl.1400.

46. Total revolving debt (which is predominantly credit card debt) increased from $64,500,000 in 1981 to $692,800,000 in 2000. SMR RESEARCH CORPORATION, *supra* note 27, at 14. Bankruptcy data calculated from data reported by Administrative Office of the United States Courts, Table F2 (total nonbusiness filings), 1980–2002.

47. Carolyn Setlow, *Home: The "New" Destination*, POINT OF PURCHASE, July 1, 2002, at 16.

48. Today the median sale price for an existing home is more than $150,000—up 32 percent in inflation-adjusted dollars from 1975. JOINT CENTER FOR HOUSING STUDIES, HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 2002, at tbl.A-1 (2002) [hereinafter STATE OF THE NATION'S HOUSING].

Since the overwhelming majority of middle-class families are homeowners, this discussion focuses on the costs of owning, rather than renting. In 2001, 79.1% of married couples with children were homeowners. OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUSING & URBAN DEV., however, is that today's home prices are *not* the product of some inevitable demographic force that has simply rolled its way across America, but rather quite the opposite.

In the late 1980s, several commentators predicted a spectacular collapse in the housing market. Economists reasoned that the baby boomers were about to become empty nesters, so pressure on the housing market would undergo a sharp reversal.[49] According to these experts, housing prices would reverse their forty-year upward trend and drop during the 1990s and 2000s—anywhere from 10 to 47%.[50]

The over-consumption diehards are undoubtedly clearing their throats, eager to interrupt to explain why housing prices shot up despite expert predictions. If they cannot sustain their claim that families are spending too much on frivolous purchases, these critics can simply adjust their chant to declare that Americans' materialistic and shallow motivations have driven housing prices up.

Where did so many people get this impression? Perhaps from the much-ballyhooed fact that the average size of a new home has increased by nearly 40% over the past generation (although it is still less than 2,200 square feet).[51] But before the over-consumption group declares victory, there are a few more details to consider. Those data tell us only where real estate developers are aiming their new home construction; they have decided that McMansions are more profitable than Levittowns.

The top 20% of the income distribution may be living in spacious digs, but those new homes are not snapped up by median-earning families. The proportion of families living in older homes has increased by nearly 50% over the past generation,[52] leaving a growing number of homeowners

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U.S. HOUSING MARKET CONDITIONS tbl.30 (2002), *available at* http://www.huduser.org/periodicals/ushmc/Summer2004/USHMc-04Q2.pdf. Although the data are not reported for subgroups, presumably this rate was lower for low-income families, and even higher for middle- and upper-income families. In the general population, middle-income households are 34% more likely than low-income households to own a home. STATE OF THE NATION'S HOUSING, *supra*, at tbl.A-9.

49. Patric H. Hendershott, *Are Real House Prices Likely to Decline by 47 Percent?*, 21 REG'L SCIENCE AND URBAN ECON. 553–63 (1991); *see also* N. Gregory Mankiw & David N. Weil, *The Baby Boom, the Baby Bust, and the Housing Market*, 19 REG'L SCIENCE AND URBAN ECON. 235–58 (1989); Jonathan R. Laing, *Crumbling Castles: The Recession in Real Estate Has Ominous Implications*, BARRON'S, Dec. 18, 1989, at 8.

50. *See* Hendershott, *supra* note 49, at 553–63; Mankiw & Weil, *supra* note 49, at 235–58.

51. STATE OF THE NATION'S HOUSING, *supra* note 48, at tbl.A-1.

52. The proportion of owner-occupied houses 25 years or older grew from 40% in 1975 to 59% in 1999. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AMERICAN HOUSING SURVEY, 1999, CURRENT HOUSING REPORTS, H150/99, at tbl.3-1 (2000) [hereinafter AMERICAN HOUSING SURVEY, 1999]; U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AMERICAN HOUSING SURVEY, 1975, GENERAL HOUSING CHARACTERISTICS, CURRENT HOUSING REPORTS, H-150-75A, at tbl.A-1 (1977) [hereinafter AMERICAN HOUSING SURVEY, 1975].

grappling with deteriorating roofs, peeling paint, and old wiring. Today, nearly six out of ten families own a home that is more than 25 years old, and nearly a quarter own a house that is more than 50 years old.[53]

Despite all the hoopla over the highly visible status symbols of the well-to-do, the size and amenities of the average middle-class family home have increased only modestly. The median owner-occupied home grew from 5.7 rooms in 1975 to 6.1 rooms in the late 1990s—an increase of less than half of a room in more than two decades.[54] What was this half a room used for? Was it an "exercise room," a "media room," or any of the other exotic uses of space that critics have so widely mocked? Nope. The data show that most often that extra room was a second bathroom or a third bedroom.[55] These are meaningful improvements, to be sure, but the average middle-class family in a six-room house has hardly rocketed to mansion status.

As millions of families sent a second earner into the workforce and pushed up total family income, one might expect that they would spend *less* on housing as a proportion of total income. Instead, just the opposite has occurred. A growing number of middle-class families now spend *more* on housing relative to family income.[56] Over a generation, the median family increased the number of rooms in their homes by 7%, but their mortgage expenses took a leap of 69%.[57] At a time when food, clothing,

53. *See* sources cited *supra* note 52.

54. AMERICAN HOUSING SURVEY, 1975, *supra* note 52, at tbl.A1; U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AMERICAN HOUSING SURVEY, 1997, CURRENT HOUSING REPORTS, H150/97, at tbl.3-3 (2000) [hereinafter AMERICAN HOUSING SURVEY, 1997].

55. AMERICAN HOUSING SURVEY, 1975, *supra* note 52, at tbl.A1; AMERICAN HOUSING SURVEY, 1999, *supra* note 52, at tbl.3-3.

56. The Consumer Expenditure Survey indicates that mortgage payments as a proportion of income have increased considerably since the early 1970s. *See generally supra* note 44. Many indexes that measure housing affordability have shown no clear trend. These indices, however, typically calculate a *theoretical* housing cost, based on such factors as current mortgage rates and an imputed down payment amount. As a result, the indices are extremely sensitive to fluctuations in interest rates, ignoring the fact that many families have fixed-rate mortgages and do not refinance during periods of high interest. Similarly, these indices typically assume that all buyers get a conventional mortgage, which ignores the extraordinary rise in high-cost subprime mortgages in recent years. Furthermore, they assume that the typical down payment has held constant over the past generation, when in fact first-time home buyers are putting down far smaller down payments today than twenty years ago. *See, e.g.*, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, WHO COULD AFFORD TO BUY A HOUSE IN 1995?, at tbl.4-2; *see also* STATE OF THE NATION'S HOUSING, *supra* note 48, at tbl.A-3. We continue to believe that the best evidence of real housing costs is the direct data on what families report they are actually paying.

57. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURE SURVEY 2000, *supra* note 42, at tbl.1400. Note that in 2000, 74% of married couples with children owned their own homes; in 1972/73 this figure was 71%. In order to isolate the effects of changing supply and demand for owner-occupied housing, this calculation only accounts for changes in mortgage expenditures (including both interest and principal) by families who owned their own homes. Federal Reserve data

home furnishings, and the like remained steady or fell, families across America were loading up on mortgages like never before to buy those homes.

The impact of rising mortgage costs has been huge. The proportion of families who are "house-poor," that is, who are spending more than 35% of their incomes on housing has quadrupled in a single generation.[58] Today it takes two working people to support a mortgage in most metropolitan areas. For example, the average police officer could not afford the mortgage for a median priced home in two-thirds of the nation's metropolitan areas on the officer's income alone.[59] The same is true for elementary school teachers.[60] This phenomenon is not limited to high-cost cities such as New York and San Francisco. Without a working spouse, the family of a police officer or teacher is priced out of a median home even in more modestly-priced cities such as Nashville, Kansas City, and Charlotte.[61]

Families have been hit by more than mortgage costs. The rising cost of health care has taken a terrible bite out of the family budget. If we focus on only the healthy family—an unrealistic assumption, but one that makes the point even sharper—medical costs are up dramatically.[62] For the families lucky enough to have an employer who contributes to their health insurance program, the costs of keeping a family covered have risen dramatically. In one generation, the out-of-pocket cost of employer-subsidized health insurance has jumped by about 90%.[63] Of course,

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produce similar results (see above).

58. The proportion of middle-income families who would be considered "house poor" has quadrupled since 1975. U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, ANNUAL HOUSING SURVEY FOR THE UNITED STATES AND REGIONS, 1975, at tbl.A-1 (1977), *available at* http://www2.census.gov/prod2/ahsscan/h150-75C.pdf (last visited Jan. 29, 2005); U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AMERICAN HOUSING SURVEY FOR THE UNITED STATES: 2001, at tbl.2-20 (2001), *available at* http://www.census.gov/prod/2002pubs/h150-01.pdf (last visited Jan. 29, 2005).

59. Barbara J. Lipman, *Paycheck to Paycheck: Working Families and the Cost of Housing in America*, 2 NEW CENTURY HOUSING 24–26 (2001).

60. *Id.*

61. *Id.*

62. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2004–2005, at 92 tbl.114 (2004).

63. In the early 1970s, the employee's portion of the health insurance bill took $1,650 from the couple's paychecks. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5. In 1972–73, the average family of four spent $160 (inflation adjusted to $640) on private health insurance (not including expenditures on Medicare). However, 38% of these families spent nothing whatsoever on health insurance, typically because they were uninsured, although in some cases because they were covered by a government program such as Medicaid or because they had a particularly generous employer who paid the entire bill. In order to get a more accurate picture of the average health insurance burden on a middle-income, insured family (who would not typically qualify for Medicaid), we have included in our

median-earning families are not all spending this amount; some are lucky enough to have employers who pick up the entire tab. For a growing number, however, the employer offers no assistance and the family either buys on the open market or gives up on health insurance altogether.[64] In recent years, the number of middle class families with no health insurance has grown precipitously.[65]

Spending on cars is also up. At first glance it would seem that the family car might just shatter the case against the Over-Consumption Myth. Cars now come jam-packed with automatic gizmos that no one had even dreamed of a generation ago, and they cost more than ever. The average family now spends an *additional* $4,000 (inflation adjusted) every year to buy, lease, and maintain the family automobiles.[66] In the words of a Toyota salesman quoted in *Affluenza*, "People's expectations are much higher. They want amenities—power steering, power brakes as standard, premium sound systems."[67] At last, a big-ticket item that proves that Americans are indeed indulging themselves with lavish extravagances they can ill afford.

There is no doubt that families are spending more, but not because they are upgrading to Corinthian leather and built-in seat warmers. Instead, the typical family with children spends its money on something a bit more prosaic—a second car.[68] Once an unheard of luxury within the middle

calculation only those families who spent at least $1 on health insurance. For our estimate for a middle-class family's typical expenditures on health insurance, the calculation is as follows: $640 (average expenditures on health insurance) divided by 62% (the portion of families who reported expenditures on private health insurance) = $1,027. Using the same manner of calculation, by the early 2000s, the cost had risen to $1,650. CONSUMER EXPENDITURES IN 2000, *supra* note 37, at tbl.1400. Privately gathered data suggest that since 2000, the rise in the costs borne by employees has increased even faster. In just two years, the cost of health insurance premiums increased by 28.4%. Brian Klepper, *Leveraging Healthcare Market Unstability*, HEALTHLEADERS NEWS (Feb. 16, 2004), *at* http://www.healthleaders.com/news/feature1.php?contentid=52365.

64. *See, e.g.*, PAUL FRONSTIN, EMPLOYEE BENEFIT RESEARCH INSTITUTE, SOURCES OF HEALTH INSURANCE AND CHARACTERISTICS OF THE UNINSURED: ANALYSIS OF THE MARCH 2004 CURRENT POPULATION SURVEY 1 (2004).

65. Between 2001 and 2003, for example, the number of employed adults under age 63 increased by nine million. HENRY J. KAISER FAMILY FOUNDATION, 2003 EMPLOYER HEALTH BENEFITS: 2003 ANNUAL SURVEY: SUMMARY FINDINGS, *available at* www.kkf.org/ehbs2003-1-set.cfm (cited in CENTURY FOUNDATION, AMERICA'S ACHILLES HEEL: JOB-BASED HEALTH COVERAGE AND THE UNINSURED, at 5–6 (2004)) (noting that "[t]he percentage of employers offering health insurance to current workers declined from 69 percent to 66 percent between 2000 and 2003").

66. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURES IN 2000, *supra* note 37, at tbl.4.

67. DE GRAAF, *supra* note 2, at 25–26.

68. According to the Bureau of Labor Statistics, the average four-person family had 1.7 vehicles a generation ago; today they have 2.5, an increase of nearly one (0.8) car per family. This is a big jump, but it isn't clear that over-consumption is to blame. The trick is in the averages. Many four-person families have more than two adults at home, such as a son in college, an elderly grandparent, or

class, the second car has become a necessity. With Mom in the workforce and the family located ever further from the city's center, that second car has become the only means for running errands, earning a second income, and getting by in the far-flung suburbs.[69]

What about the price tag on that second car? An average new car costs more than $22,000 today, compared with less than $16,000 in the late 1970s (inflation adjusted).[70] The critics might point a triumphant finger, but they would miss another important fact: cars last longer than they used to. In the late 1970s, the average car on the road was just five and a half years old.[71] Now the average family is driving a car that is more than eight years old.[72] Today's families pay more for that shiny new vehicle than their parents did, but they hold on to it longer too. In fact, when we analyzed unpublished data from the Bureau of Labor Statistics, we found that the average amount a family of four spends *per car* (car payments, insurance, maintenance and so forth) is 20% *less* than it was a generation ago.[73] For all the griping about those overpriced SUVs, there is little evidence that sunroofs and power windows are sending families to the poorhouse.

Leather interiors may not be responsible for the rise in bankruptcies, but the over-consumption camp might still argue that families could have saved by buying cheaper cars. After all, a family does not *need* a new SUV with a CD player, at least not in the same way that it needs decent day care or a home in a safe neighborhood. But we pause here to offer a bit of sympathy for the much-maligned buyer of the family car. The din from the car industry has changed pitch over the past generation. Glance at an advertisement from any maker of family cars, and there you will see it:

even a brother-in-law who doesn't have his own place. The number of adults in the average family of four is 2.4 today (up just slightly from 2.3 a generation ago). This means that the average family has shifted from owning 0.7 vehicles per adult to 1.0 vehicles per adult. In other words, as Mom headed to the office and families moved deeper into the suburbs, they have indeed splurged, seeing to it that each adult has his or her own vehicle so they can get to work, school, and market. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURES IN 2000, *supra* note 37, at tbl.4.

69. Homeowners' median distance to work increased from 7.9 miles in 1975 to 10 miles in 1999. AMERICAN HOUSING SURVEY, 1975, *supra* note 52, at tbl.A1; AMERICAN HOUSING SURVEY, 1999, *supra* note 52, at tbl.2-24.

70. OFFICE OF TRANSP., U.S. DEP'T OF ENERGY, AUTOMOBILE AFFORDABILITY, 1979–1999, OTT FACT OF THE WEEK 121 (2000), *at* www.ott.doe.gov/facts/archives/fotw121.shtml (last visited Dec. 19, 2002).

71. PATRICIA S. HU & JENNIFER R. YOUNG, U.S. DEP'T OF TRANSP., SUMMARY OF TRAVEL TRENDS: 1995 NATIONWIDE PERSONAL TRANSPORTATION SURVEY, at tbl.5 (1999).

72. *Id.*

73. BLS, INTERVIEW SURVEY, *supra* note 37, at tbl.5; CONSUMER EXPENDITURES IN 2000, *supra* note 37, at tbl.4.

safety for sale. This testimonial is featured on the official Volvo Web site: "It's every husband's worst nightmare. The call at 8 a.m. on a Friday morning saying your wife, who is five months pregnant with your first child, just had an auto accident . . . . We invested in safety and it paid off in ways words can't express."[74] Sure, maybe families could do without the twelve-speaker sound systems, but we would not ask them to do without the automatic braking systems, the crash-resistant steel frames, or the dual airbags that they are spending all that money on.

But do the cars have to be so *big?* SUVs may drink gasoline with abandon, but families are also buying room for safety devices that did not even exist in the early 1970s. Every time I strap my granddaughter into the car, I am reminded of what I did when my daughter was a baby. I tucked her into a wicker bassinet, which perched on the back seat of our Volkswagen Beetle. I was somewhat unusual—not because I failed to use so much as a seat belt to hold my seven-pound daughter in place—but because I opted not to hold her in my lap, where a simple fender bender would have transformed her into a free-flying projectile.

Safety standards have changed, with a real effect on the family pocketbook. My daughter would not even think of driving her toddler to the end of the block without strapping her into a plastic seat so enormous that she looks like an astronaut preparing to launch into outer space. She shelled out more than $100 for that seat, but the real expenditure was for her car. A few years ago she was driving a little two-door Mazda—more or less the modern equivalent of my Beetle. But when the baby came, the Mazda had to go, replaced by a four-door car big enough for two car seats (with the thought that her first-born may one day have a younger brother or sister to pick on). It gets particularly tough for families with more than two kids. Jane Stewart, a stay-at-home mom in Denver, describes the consequences of having three children under the age of five.[75] According to many experts, the Stewarts should harness those three kids in the back seat—not just with a seat belt, but into a bulky car seat or "booster seat" designed especially for children—until they are at least *eight years old*.[76] Jane explains, "We have a Grand Cherokee and three car seats in the back. When the baby needs [the next-size car seat], we don't think all three will

74. Volvo.com., *Volvo Saved My Life*, *at* http://apps.volvocars.us/volvosavedmylife (Mar. 23, 2005) (on file with author).

75. WARREN & TYAGI, *supra* note 27, at 49.

76. Melanie Haiken, *Car Seat Safety: How to Choose and Use a Car Seat: Why Does my Child Need a Booster Seat?*, *at* http://www.parentcenter.com/refcap/39413.html (last visited Nov. 3, 2004).

fit. Then it will be time for a Suburban or a minivan."[77] A generation ago, the Stewarts could have fit their kids into the back seat of any sedan on the market, with room left over for the family dog. Today, even a Jeep Grand Cherokee—a car that weighs 4,000 pounds—is not big enough. The critics may be right that families do not need all those gizmos in their cars, but we would certainly take sides with the Stewarts against anyone who argued that they did not need all that *room*.

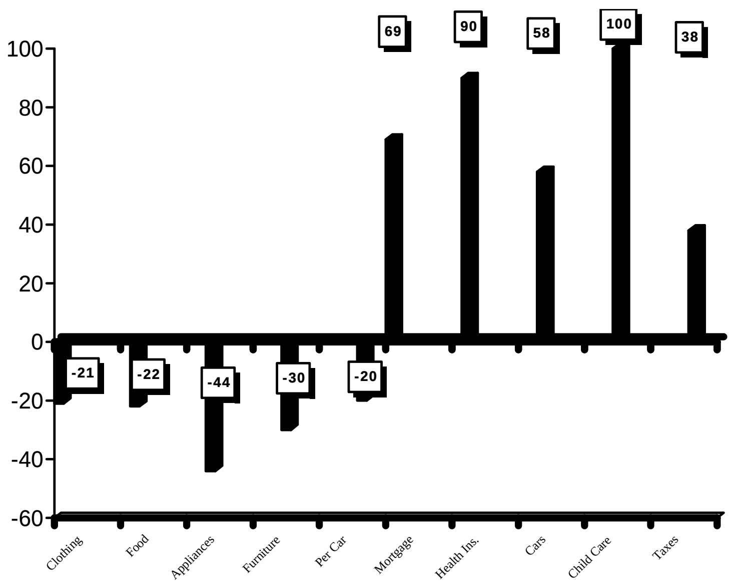
By and large, families have spent prudently on their automobiles, or at least as prudently as they did a generation ago. And the money they are spending is paying off: The rate of child auto fatalities has declined steadily since the mid-1970s, thanks at least in part to safer cars and better car seats.[78] For all the criticism hurled at car manufacturers (and car buyers), it is important to note that families drive stronger, safer cars that last a lot longer than they used to.

Adding It All Up

The Over-Consumption Story dominates any discussion of the financial condition of America's families, but when all the plusses and minuses of changes in family spending are added up, a very different picture emerges. Families are spending less on ordinary consumption and more on the basics of being middle class.

77. WARREN & TYAGI, *supra* note 27, at 49.
78. FATALITY FACTS—CHILDREN, 2001 INSURANCE INSTITUTE FOR HIGHWAY SAFETY (2001).

Figure 5: Median Family Spending by Category, Percent Change 1970s–2000s

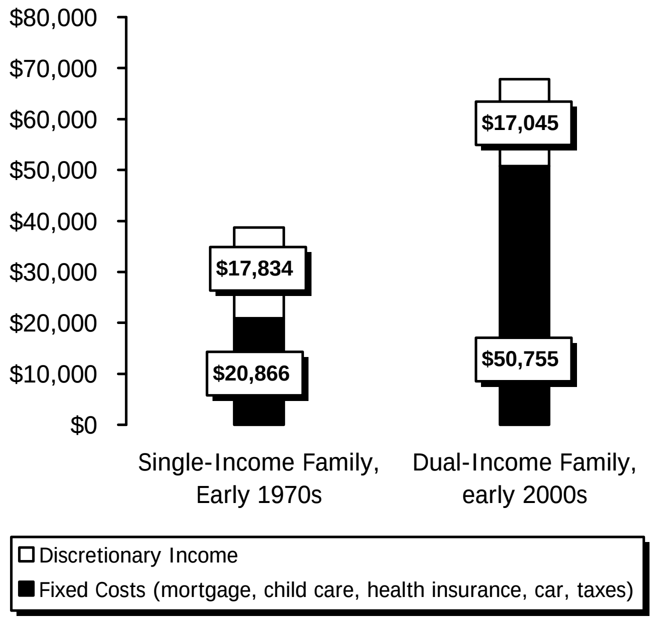


These data tell a story of middle-class families clipping coupons and buying pasta in bulk, while they hemorrhage money to pay the bills for their mortgages, health insurance, transportation, and child care.

The changes in income and in expenses have transformed the family budget. A generation ago, the median family kept one parent at home and put one into the workforce.[79] Today, the median family puts both parents to work, but their basic expenses have outrun even the addition of a second worker. Even with two people in the workforce, the new family budget still leaves families trailing their one-income parents from a generation ago.

79. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 2004–2005, at 372 tbl.571 (2004). In 1970, the percentage of women in the labor force was 40.8%, as opposed to 59.6% in 2002.

Figure 6: Fixed Costs as a Share of Family Income



[Source: ELIZABETH WARREN & AMELIA WARREN TYAGI, TWOTHE INCOME TRAP: WHY MIDDLE CLASS MOTHERS AND FATHERS ARE GOING BROKE 51 (2003).]

The new family budget is notable first for the sharp dissonance between earning and spending. The two-income family of the 2000s has less money to spend on every consumption good—food, clothing, appliances, furniture, life insurance, vacations, etc.—than the one-income family of a generation ago. They now have two people at work, but less money for spending.

But the new family budget is notable for another reason: it is far more deeply leveraged. A generation ago, the one-income family committed about 54% of its pay to the basics—housing, health insurance, transportation and taxes. In effect, the one-income family spent about half its income to make the nut—the basic expenses that do not vary if someone gets sick or loses a job. Today, the basic expenses consume 75% of the family's combined income. Their nut—the amount that they must pay in good times and in bad—is fixed at 75% of their income. With so much of its income earmarked for fixed expenses, today's family has no margin for error. There is no leeway to cut back if one parent's hours are cut, or if the other gets laid off. There is no room in the budget if someone needs to take a few months off work to care for Grandma, or if a parent hurts his back and cannot work. The modern American family is walking on a high wire without a net; they pray there will not be any wind. If all goes well, they will make it across safely, their children will grow up and finish college, and they will move on to retirement. But if anything goes wrong, then today's two-income family is in big, big trouble.

The expenses laid out here are averages, and plenty of families manage to pay less (or more). But the alternatives families have pursued in an effort to make ends meet bear some scrutiny. Consider child care: Government statistics show that the average amount a family of four spends on after-school care is lower than the $4,350 cited above. The number reported here is calculated based on reports of families who pay for their child care, but the government "average" includes children who have a grandmother or an older sibling who watches them for free. That is a great way for those lucky families to save some money, but it does not do a bit of good for the typical family that has to rely on paid child care. For them, paying less money means getting less quality, such as an unlicensed neighbor who parks several children in front of her television or an overcrowded center with barely passable facilities. The cost of child care is also on the march. From 2000 to 2003, the cost of child care increased 19%.[80]

There are other ways families could save money. Families could drop their health insurance expenses to zero by following the model of millions of other middle-class families who simply live without health insurance and pray for the best.[81] Or they could give up their house and move into an apartment in a marginal neighborhood. There are always options, but for families with children, these options signal that their middle-class lives are slipping away.

Even if they are able to trim around the edges, families are faced with a sobering truth: Every one of those expensive items—mortgage, car

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80. In 2000, a family with two children under age five in full-time daycare was spending $10,860 on childcare. By 2004, that figure had increased to approximately $12,910. (Calculated from 1999 Census Reports and detailed Consumer Price Index, reporting average price increases for childcare and nursery case).

81. The Congressional Budget Office estimates that between 21 and 31 million Americans have no health insurance over a full year, and between 57 and 59 million Americans are without health insurance at some point during the year. CONG. BUDGET OFFICE, HOW MANY PEOPLE LACK HEALTH INSURANCE AND FOR HOW LONG? § 3 (2003), *available at* http://www.cbo.gov/showdoc.cfm?index=4210 (last visited Mar. 22, 2005). The number of adults without health insurance has increased by about nine million in just three years. *See* sources cited *supra* note 65.

payments, insurance, tuition—is a fixed cost. Families must pay them each and every month, through good times and bad times, no matter what. Unlike clothing or food, there is no way to cut back from one month to the next. Short of moving out of the house, withdrawing a child from preschool, or canceling the insurance policy altogether, the families are stuck. Fully 75% of their income is earmarked for recurrent monthly expenses.

If all goes well, many families will squeak by. They will even get a breather in another five years or so, when their children are old enough to be left alone after school. But the spending hiatus will last for just a few years, until the older child heads off to college. At that point, the family's budget will be squeezed harder than ever as they search for the money to cover room, board, and tuition for the local state university.[82] If they are lucky, they will have set something aside during the intervening years, and they will find a way to put their kids through college. And when they hit their mid-to-late fifties, these couples might begin to think about putting something away for their retirement (about 30 years later than a financial planner would recommend).[83]

And so go the lives of the families with "affluenza," "the urge to splurge," and other clever variations on rampant materialism. Some will cling to the idea that these families over-consume, but they can do so only with a deliberate disregard for the data that tells a very different story.

Why The Myth Is So Forceful

If there is so little evidence that middle-income Americans are on an unrestrained buying binge, and so much evidence that the basic costs to hold on to a place in the middle class are increasing, then why does the Over-Consumption Myth persist? Why does a story of misbehavior and irresponsibility win out over a story of hard-working people who get caught up in job losses, medical debts, and family breakups? Why is there no acknowledgement that financial misfortune is often a matter of bad luck, and that irresponsible spending has little to do with the long lines at the bankruptcy courts and the high rates of credit card default?

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82. From 1980 to 2000, the share of the family income that would be required to send a child to a public university has doubled. NATIONAL CENTER FOR PUBLIC POLICY AND HIGHER EDUCATION, LOSING GROUND, A NATIONAL STATUS REPORT ON THE AFFORDABILITY OF AMERICAN HIGHER EDUCATION 4, 5 fig.1 (2004).

83. Only 52% of all families have a retirement account. Ana Aizcorbe et al., *Recent Changes in U.S. Family Finances: Evidence from the 1998 and 2001 Survey of Consumer Finances*, FED. RES. BULLETIN, Jan. 2003, at tbl.5B.

One explanation is overtly political. High interest credit card issuers and sub-prime mortgage lenders operate only because a careful combination of deregulation and protective regulation permits creditors to charge fees and interest rates that would have landed them in jail less than 25 years ago.[84] If millions of Americans believed that families were losing their homes and they were left to cope with repo agents and aggressive bill collectors because they have been fleeced by deceptive marketing and oppressive contract terms, then the regulations that support billions of dollars of profits in the consumer credit industry could be easily changed. If, however, Americans believe that the only people in financial trouble are those who have misbehaved, if only the stupid or the venal are caught in a tangle of credit, then there is no reason to restrict the lenders. Everyone will be getting just what they deserve.

The Over-Consumption Myth is good for the financial services industry. In the world of statutory regulation, reality matters less than the perception of reality. The Over-Consumption Myth keeps would-be reformers at bay, and it blunts the criticism of the industry leveled by consumer groups and advocates for the elderly, for racial minorities and for women. After all, who wants to organize to defend deadbeats who are the cause of their own destruction?

Political maneuvering over the bankruptcy laws provides a good illustration. The only effective defense for a family with high, unpaid consumer debts is personal bankruptcy. When families declare bankruptcy, federal law requires that their credit card issuers and payday lenders cease collection actions of all kinds, and the debts will most likely be discharged.[85] An amended bankruptcy law that was more expensive for debtors to use, that was loaded with traps that would exclude more families from bankruptcy, and that provided less relief for those who completed the bankruptcy process would improve the bottom line for creditors, who could continue their collection efforts even when families were drowning in debt. The credit industry drafted a long series of amendments to the bankruptcy laws,[86] which has received widespread

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84. For a more detailed discussion of the deregulation of consumer lending, see WARREN & TYAGI, *supra* note 27, at 126-52.

85. 11 U.S.C. §§ 362, 727 (2000).

86. The American Bankers Association describes the process this way:

> The [industry lobbying group] AFSA hired George Wallace, a lawyer and bankruptcy expert, who wrote a report that could serve as a model for bankruptcy legislation and was paid $100,000 in lobbying fees in 1997. That year Mr. Tassey gave the report to then-Rep. Bill McCollum, a Republican from Florida. It was no random shot—Mr. Tassey had recently hired Tom Rosenkoetter, one of Mr. McCollum's top aides. The AFSA strategist also knew

support in Congress.[87] When Senator Hatch led the charge for the industry bill, he insisted that the real change needed in America is for individuals to "take personal responsibility for their debts."[88]

There is no evidence that Senator Hatch was talking about responsibility for medical debts when someone got sick and had no health insurance. There is no evidence he was talking about debts run up to buy food, clothes or utilities when someone was unemployed. When Senator Hatch talks about people who "run up huge bills and then expect society to pay for them,"[89] he is speaking the language of the Over-Consumption Myth. Personal responsibility for debts is about paying for the things people bought that they did not really need, not about what it means to be unemployed or to have no health insurance.

Judge Edith Jones and Professor Todd Zywicki make the connection even clearer in explaining why bankruptcies are on the rise: "[I]f debt 'causes' bankruptcy, it is only because overspending and an unwillingness to live within one's means 'causes' debt. In short, one can simply recharacterize the 'debt causes bankruptcy' thesis as 'overspending causes bankruptcy.'"[90] In case anyone missed the point, they drive it home: "Bankruptcy is now too frequently a choice fostered by irresponsible spending habits and an unwillingness to live up to commitments."[91]

Senator Hatch may be motivated by a willingness to assist his most ardent supporters,[92] but his willingness to denounce those in trouble may

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> the lawmaker and supported him, having held, that he can recall, at least at least one fundraiser for him.
>
> They were shopping around their proposal. I was interested, says Mr. McCollum, now a partner at the law firm of Baker & Hostetler in Orlando.
>
> Mr. Wallace's work became Rep. McCollum's framework for a new bill.

Barry Rehfeld, *Top Creditor Lobbyist Tassey Goes for Broke*, AM. BANKER, May 17, 2001, at 1.

87. *See* Stephen Nunez & Howard Rosenthal, *Bankruptcy "Reform" in Congress: Creditors, Committees, Ideology, and Floor Voting in the Legislative Process*, 20 J.L. ECON. & ORG. 527 (2004) (tracing the recent history of the bill and noting the supermajorities that have voted for it at various times).

88. Homepage of the U.S. Senate Comm. on the Judiciary, *Statement of Sen. Orrin Hatch before the U.S. Senate Comm. on the Judiciary, The Consumer Bankruptcy Reform Act of 1998* (May 21, 1998), *at* http://judiciary.senate.gov/oldsite/ogh52198.htm (last visited Mar. 22, 2003).

89. 147 CONG. REC. S1,934 (daily ed. Mar. 7, 2001) (statement of Sen. Hatch).

90. Jones & Zywicki, *supra* note 6, at 224.

91. *Id*. at 208.

92. For a discussion of the connection between Senator Hatch, campaign contributions, and targeted amendments to help consumer debt collectors, see, for example, Bob Bernick, Jr., *Hatch lands in a new funding flap*, DESERET NEWS, Jul. 17, 2000, at A06 (aides to Senator Hatch "say Hatch did nothing wrong in attending a campaign fund-raiser hosted by the local attorney and then pushing an amendment to a bankruptcy reform bill that the attorney had previously asked for."); Lesley Mitchell, *Hatch Takes Heat on Plan For Bankruptcy*, SALT LAKE CITY TRIB., May 17, 2000, at B6. The single biggest contributors to Senator Hatch's campaign coffers in the past five years have been those in the

also be ideological. Surely Judge Jones and Professor Zywicki have little to gain in direct political contributions for advancing a bankruptcy bill that favors banks over families. The suspicion that families are in financial trouble because they over-consumed is an idea that is deeply entwined with the politics of personal responsibility. The ideology of over-consumption is so seductive that even self-declared conservatives who believe in sharply restricted government powers are willing to find new ways to involve the government in helping companies squeeze more money out of misbehaving families, turning the publicly-supported bankruptcy courts into debtor review boards and collection agents for creditors who were unwilling to spend the money to screen their own borrowers in advance or restrict their access to credit.[93] These conservatives are willing to see the bankruptcy courts get entangled in a debtor-by-debtor analysis of family earning and spending, all with the goal of issuing a presumptive warning to other families not to over-consume.

The deep entanglement of the power of vote-buying and advancing an ideological viewpoint was explored by Princeton political scientists Steven Nunez and Howard Rosenthal. They analyzed the intersection of ideology, campaign contributions, and voting in Congress, using the example of a credit industry supported amendment to the bankruptcy laws.[94] Nunez and Rosenthal concluded that support for the bankruptcy bill among Republicans was largely a matter of ideology.[95] Among Democrats, who might be less inclined to support the dominant view that human misfortune was largely a matter of just desserts, they identified enough vote-buying through campaign contributions to conclude that "[a]fter controlling for ideology, we find that campaign contributions are significantly correlated with voting."[96] Nunez and Rosenthal see the importance of keeping the public on board for the Over-Consumption Myth: "[I]f public opinion tilts toward a view that it is necessary to discipline a minority of profligate, strategic debtors, then the industry bill should attract broad support . . . ."[97]

Public relations campaigns and vote-buying in Congress actively promote the Over-Consumption Myth, and the ideological conviction that

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financial services industry—consumer finance, insurance and real estate. Center for Responsive Politics, *Orrin G. Hatch: Contributions by Sector*, *at* http://www.opensecrets.org/politicians/sector.asp?CID=N00009869&cycle=2004 (last visited Jan. 29, 2005).

93. *See, e.g.*, TODD ZYWICKI, BANKRUPTCY LAW AS SOCIAL LEGISLATION 1–18 (Working Paper).

94. Nunez & Rosenthal, *supra* note 87, at 528–29.

95. *Id*. at 533.

96. *Id*.

97. *Id*. at 530.

personal responsibility explains most financial misfortune advances the myth as well. But there is a third leg in the support of the Over-Consumption Myth, a leg supported by families who hope that it is true.

Perhaps the Myth survives because it provides much-needed comfort in a dangerous world. There is nothing glamorous or mysterious about the events that conspire to drive families into financial ruin. They are remarkably common, ordinary and painful. Middle class families—families that look just like our own—are facing the financial consequences of layoffs, living without health insurance, and trying to support two households on incomes that barely supported one. Job loss, medical problems, and family breakups are cited in nearly 90% of all bankruptcies.[98] But if that means that more than a million and a half families will file for bankruptcy this year for reasons that are the hardest to plan against, then who is safe?

The Over-Consumption Myth can be seen as a prayer. It nourishes the unspoken idea that families who have lost their financial footing are a tainted group, some "other" who are different from the rest of us. If we can believe that those in serious trouble are morally suspect, then it is easier to glance away from the harsh dangers of everyday life. Those among us who

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98. Consumer Bankruptcy Project 2001 (Among all households in bankruptcy, 85.0% cite income loss, medical problems, or family breakup as a reason for filing). The Consumer Bankruptcy Project relied on a diverse group of a dozen professors from seven different research universities to design and implement the study, and it is appropriate to credit all of their efforts. Dr. Teresa A. Sullivan, Executive Vice-Chancellor for Academic Affairs of the University of Texas System and Professor of Sociology; Professor Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard University; and Professor Jay Lawrence Westbrook, Benno Schmidt Professor of Law at the University of Texas, took principal responsibility for designing the basic questionnaire and telephone survey. In addition, Professor Michael Schill, then Professor of Law at New York University and Director of the Furman Center for Real Estate and Urban Policy and now Dean at the U.C.L.A. School of Law, and Dr. Susan Wachter, Professor of Real Estate and Finance, The Wharton School, University of Pennsylvania, were principal drafters of survey questions about housing and real estate. Dr. David Himmelstein and Dr. Steffie Woolhandler, both Associate Professors of Medicine, Harvard Medical School, designed the medical questions. Bruce Markell, then the Doris S. and Theodore B. Lee Professor of Law at the University of Nevada, Las Vegas, and now a bankruptcy judge for the United States Bankruptcy Court for the District of Nevada, and Robert Lawless, Gordon & Silver, Ltd., Professor of Law, at the University of Nevada, Las Vegas, drafted the small business questions. Katherine Porter, visiting Associate Professor of Law at the University of Nevada, Las Vegas, John Pottow, Assistant Professor of Law at the University of Michigan, and Dr. Deborah Thorne, Assistant Professor of Sociology at Ohio University, served, in turn, as Project Director, each with a hand in both the design of portions of the project as well as direct oversight of the data collection. These dozen principal investigators brought expertise from a number of policy areas such as family economics, demographics, employment, health care finance, housing policy, small business, women's issues, law, sociology, business, and economics, as well as specific skills in data collection and analysis. Alex Warren developed the coding instruments, managed the database and conducted many of the dataruns. For more details about the Consumer Bankruptcy Project, see THE TWO-INCOME TRAP, *supra* note 27, at 181–88.

carefully clip grocery coupons, who would never buy $200 sneakers and who always buy pasta in bulk are surely protected from a sudden jolt that could send us reeling out of the middle class. The Myth supports a comforting illusion that the rest of us are safely distanced from financial collapse, making it possible to avoid that terrifying moment of connection with someone caught in a financial disaster, that frightening there-but-for-the-grace-of-God-go-I realization.

The Over-Consumption Myth may be little more than an fairy tale, but it has the power to maroon families—both emotionally and financially—just when they most need support. And it has the power to distract families who need to focus hard on their own vulnerabilities. Changes are needed to increase the safety of the middle class, both at the government and at the personal level. Modest changes that are not radical or exorbitantly expensive could increase the security of the middle class. But change requires a consensus that something is wrong. So long as Americans can be persuaded that families in financial trouble have only themselves to blame, there will be no demand to change anything. In order to get on with the difficult business of making America once again safe for middle class families, the Over-Consumption Myth must be laid to rest for good.