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A MORAL PERSPECTIVE ON THE ROLE OF EDUCATION IN SUSTAINING THE MIDDLE CLASS

SUSAN PACE HAMILL*

"[T]he America I grew up in—the America of the 1950s and 1960s—was a middle-class society, both in reality and in feel. . . . But that was long ago. . . . We are now living in a new Gilded Age."¹

I. INTRODUCTION

Currently in America there is widespread concern that the middle class is shrinking. It is becoming more difficult for many in the middle class to maintain their position, and the upper classes are expanding, thus creating a wider gap between the "haves and have-nots."² A shrinking

* Professor of Law, The University of Alabama School of Law. Professor Hamill gratefully acknowledges the support of the University of Alabama Law School Foundation, the Edward Brett Randolph Fund, and the William H. Sadler Fund; the staff at The University of Alabama Bounds Law Library, especially Paul Pruitt and Penny Gibson; my secretary Donna Warnack; and my 2009–2010 Research Team, Rachel English, Hannah Richard, Kelly Walker, Lee Fernon, Muhammad Abdullah, Ben Dean, Brad Farley, Matthew Creel, and Opal Hammer.

1. Paul Krugman, *For Richer*, N.Y. TIMES MAG., Oct. 20, 2002, at 62, 62.

2. See Reihan Salam, *Keeping Down with the Joneses*, FORBES, Aug. 23, 2009, available at <http://www.forbes.com/2009/08/23/middle-class-real-estate-opinions-columnists-reihan-salam.html> ("The idea of middle-class prosperity is America's great contribution to the world. . . . Yet in the United States, a decade of sluggish growth in jobs and wages has left much of the middle class in rough shape. From 1999 to 2009, there was virtually no growth in private-sector employment. The public sector has been responsible for most of this decade's modest job gains. Over the same period, GDP has grown at an average rate of 1.9% a year, a shade below the 2% rate achieved during the long and miserable decade of oil shocks and stagflation that ran from 1973 to 1983."); Thomas F. Cooley, *Has Rising Inequality Destroyed the Middle Class?*, FORBES, June 2, 2009, available at <http://www.forbes.com/2009/06/02/middle-class-income-inequality-technology-opinions-columnists-taxes.html> ("Everyone is worried about the American middle class. The decline of the American worker, and thus the middle class, is a key trope in economic downturns, amplified by the bankruptcy of General Motors and Chrysler and the loss of so many well-paid jobs in the manufacturing sector. . . . Now the narrative is less about the declining middle class and more about a gilded age of the super-rich. The middle feels as if it has lost ground because of the extraordinary wealth accumulated by the very, very few. But that suggests that the pie is a fixed size, and that is clearly not the case."). Concern over a shrinking middle class also appeared during the inflationary period of the 1970s. See Stephen Koepp, *Is the Middle Class Shrinking?*, TIME, Nov. 3, 1986, available at <http://www.time.com/time/magazine/article/0,9171,962753-1,00.html> (discussing how increased prosperity resulting from the growth of the middle class during the 1950s and 1960s gave way to the inflation of the 1970s, which caused real income levels to stagnate for more than a decade).

middle class, combined with an expansion of the wealthier and lower classes, has the potential of negatively affecting the economy³ and creating political instability.⁴ Ancient philosophers, undoubtedly studied by our nation's founders, identified the opportunity for large numbers of citizens to enter the middle class as a key element to a solid, stable, and prosperous state.⁵

This essay first places the middle class in its historical and literary context and then illustrates a strong relationship between achieving middle class status, at least from an economic perspective, and access to higher education or training in technology skills. After highlighting studies illustrating that a solid K–12 education is essential to achieve a college education or equivalent training, and that adequate funding of K–12 education is an important component of providing a good K–12 education, this essay summarizes empirical evidence from another article showing that most states inadequately fund K–12 education, especially in high-poverty school districts, and as a result are aggravating the trend of the shrinking middle class.

Finally, this essay summarizes theological analyses developed extensively in two other articles establishing that the standards of justice contained in the moral principles of Judeo-Christian ethics require that the

3. See William Easterly, *The Middle Class Consensus and Economic Development*, 6 J. ECON. GROWTH 317 (2001).

4. See, e.g., ALEXANDER DEMANDT, *DER FALL ROMS* 695 (1984) (listing “[r]uin of the middle class” as one of the many reasons that the Roman Empire fell); Norman Gash, *Reflections on the Revolution*, NAT’L REV., July 14, 1989, at 4 (identifying the desire of the middle class for “greater social recognition, easier access to rank and power, and wider careers for their talents” as among the most important driving forces propelling the French Revolution). See also DAVID LANDES, *THE WEALTH AND POVERTY OF NATIONS* 217–18, 221 (1998) (discussing how society experiences ideal growth and development with a large middle class, and how the “great English middle class” greatly contributed to England industrializing before other nations); Easterly, *supra* note 3, at 317 (“A higher share of income for the middle class and lower ethnic polarization are empirically associated with higher income, higher growth, more education, better health, better infrastructure, better economic policies, less political instability, less civil war . . . more social ‘modernization’ and more democracy.”).

5. See ARISTOTLE, *POLITICS* 191–92 (Benjamin Jowett trans., Random House 1943) (306 BC) (“Thus it is manifest that the best political community is formed by citizens of the middle class, and that those states are likely to be well-administered in which the middle class is large, and stronger if possible than both the other classes, or at any rate than either singly; for the addition of the middle class turns the scale, and prevents either of the extremes from being dominant. Great then is the good fortune of a state in which the citizens have a moderate and sufficient property; for where some possess much, and the others nothing, there may arise an extreme democracy, or a pure oligarchy; or a tyranny may grow out of either extreme—either out of the most rampant democracy, or out of an oligarchy; but it is not so likely to arise out of the middle constitutions and those akin to them. I will explain the reason of this hereafter, when I speak of the revolutions of states. The mean condition of states is clearly best, for no other is free from faction; and where the middle class is large, there are least likely to be factions and dissensions.”).

laws and policies of the community ensure that each individual enjoys a reasonable opportunity to reach his or her potential. After first identifying adequate funding of K–12 education as a key feature of ensuring reasonable opportunity, this essay explores from a moral perspective the relationship between inadequate K–12 funding in most states, especially among the high-poverty school districts, and the lack of access to the higher education or other training necessary to have a chance to move up into the middle class. This essay concludes that the Judeo-Christian standards of justice that require reasonable opportunity also embrace an opportunity to move into the middle class, or maintain middle-class status, and consequently that the current trend of the shrinking middle class raises significant moral issues in addition to economic and political issues.

II. EDUCATION AND THE MIDDLE CLASS IN HISTORICAL AND LITERARY CONTEXT

In pre-modern Europe, the German “*burgher*” and the French “*bourgeoise*” denoted the people living in cities and working in skilled trades and professions that existed at that time, as contrasted to landed aristocracy or peasants.⁶ One could argue that some form of education has always been related to middle-class status. Those within the pre-modern middle class obviously needed to develop the skills necessary for the trades and the knowledge to gain access to the professions. For the middle class, some form of education and hard work, as opposed to merely owning sufficient wealth, which in the pre-modern times always took the form of vast lands, has always been and still is the key to achieving economic sufficiency and prosperity.⁷

Classic literature provides further insight explaining the circumstances of being in the middle class, and the difference between the middle class and the aristocracy of eighteenth-century Europe. For example, Jane Austen illustrates a common attitude among the aristocracy of demeaning members of the middle class and keeping them in their place. Her novels define the middle class by their professions, which required training and education under the standards of that time, and which thus made them distinct from the land-owning upper echelons of society.⁸

6. Michael Lind, *Are We Still a Middle-Class Nation?*, ATLANTIC MONTHLY, Jan.–Feb. 2004, at 120, 120.

7. *Id.*; *infra* notes 14, 28.

8. See, e.g., JANE AUSTEN, *PERSUASION* (J.M. Dent & Sons ed., 1906) (1818). Austen summarizes the common aristocratic attitude toward the middle class thus: Yes; it is in two points offensive to me; I have two strong grounds of objection to it. First, as a means of bringing persons of obscure birth into undue distinction, and raising men to honours which their fathers and grandfathers never dreamt of; and secondly, as it cuts up a man's youth and vigour most horribly; a sailor grows old sooner than any other man. I have observed it all my life. A

Austen utilizes marriage as a motif for the barriers between the classes, and as a useful tool of the aristocracy to marginalize the middle class. The elite upper class often tried to prevent middle-class people from moving up through marriage.⁹

In her novel *Persuasion*, Austen accomplishes this through her ambitious character, Frederick Wentworth, a young naval officer seeking to marry Anne Elliott, the middle daughter of Sir Walter Elliott, a baronet owning substantial lands. As a military professional, Wentworth is considered middle class, and is initially rebuffed in his ambitious pursuits both to marry Anne and to obtain a promotion in the military.¹⁰ Similarly, Austen displays this disdain of the upper class toward the middle class in her novel *Northanger Abbey*. Catherine Morland, one of ten children of a country clergyman, after a tumultuous courtship that several members of the upper class opposed, marries the wealthy and titled Henry Tilney, thereby advancing her status to the upper class.¹¹ Wentworth and the clergyman relied on significant education and training under the standards of that time, and hard work to make their livings, while members of the upper class seeking to exclude them relied on their landed estates to support their lavish lifestyles.¹²

Unlike the social class system of England, American social class has always been tied with economics.¹³ With hard work, Americans can move up both the economic and social ladders, whereas England's landed

man is in greater danger in the navy of being insulted by the rise of one whose father his father might have disdained to speak to, and of becoming prematurely an object of disgust himself, than in any other line.

Id. at 15.

9. See, e.g., *id.*

10. See generally *id.*

11. See, e.g., JANE AUSTEN, *NORTHANGER ABBEY* (J.M. Dent & Sons ed., 1906) (1817). Austen sets the stage for her novel with a description of the main characters' social stations:

Her father was a clergyman, without being neglected, or poor, and a very respectable man, though his name was Richard—and he had never been handsome. He had a considerable independence besides two good livings—and he was not in the least addicted to locking up his daughters. Her mother was a woman of useful plain sense, with a good temper, and, what is more remarkable, with a good constitution.

Id. at 1.

12. See generally *id.*

13. HERBERT CROLY, *THE Promise of American Life* 3 (1909) ("From the beginning, Americans have been anticipating and projecting a better future."). The appeal of the American middle class is that it has always been tied to economics (as opposed to a born-into social class), so that the possibility for advancement is ever-present. In England, the landed aristocracy and the gentry were the privileged classes. *Id.* at 233–34. In contrast, economic opportunity in America could be achieved, "not by a conservative imitation of past achievements, but by laborious, single-minded, clear-sighted, and fearless work." *Id.* at 6. Although America never had Europe's rigid caste system, with the extreme gap between the impoverished peasants and the landed aristocracy, until World

aristocracy and gentry were social classes closed forever to those not born into them.¹⁴ American literature set during the early twentieth century depicts the often stormy relationship between the middle class and the American aristocracy, and demonstrates the sense of anxiety and tragic consequences suffered by members of the upper classes in losing their wealth and status.¹⁵

For example, in *A Streetcar Named Desire*, Tennessee Williams portrays the fall of the Southern aristocracy due to the industrial urban uprising. The result of the class displacement horrifies the aristocracy. No longer in a position of the elite, and without the self-resilience members of the middle class develop from relying on skill, education, and hard work to sustain them, the aristocracy struggles to adjust to a middle-class lifestyle. The courtship of Blanche DuBois, whose family lost their plantation during the late nineteenth century, by a middle-class immigrant, Stanley Kowalski, demonstrates the turmoil experienced by members of the aristocracy having a difficult time accepting their new placement in society.¹⁶

In *House of Mirth*, Edith Wharton illustrates that fallen members of the aristocracy would rather die than adjust to the middle-class status that they disdain. Lily Bart, an aristocratic socialite who has squandered her inheritance, commits suicide instead of marrying a middle-class lawyer, whom she loves on a purely romantic level. Wharton proposes that the rigid lines between the classes are engrained throughout childhood into adult life. The characteristics that create the barriers can be inherited tendencies, which through Lily's death demonstrate that regardless of how an individual may climb or fall along the social ladder, the social barriers are never truly broken—you are who you are and no education or amount of money can counter this.¹⁷

War II, complex struggles involving economic classes produced wide gaps with a small semblance of a middle class. *Id.*

14. *Id.*

15. *Id.*

16. See generally TENNESSEE WILLIAMS, *A STREETCAR NAMED DESIRE* (New Directions 2004 ed.) (1947). Williams' character Blanche DuBois referred to the streetcar that brought her to Elysian fields, away from her aristocratic lifestyle on a Southern plantation to a new life as a middle-class woman in the urban mid-west, by saying that "[i]t brought me here—where I'm not wanted, and where I'm ashamed to be." *Id.* at 81.

17. See generally EDITH WHARTON, *HOUSE OF MIRTH* (1905). In this novel, Lily reflected on her decision to pursue a marriage with wealthy and socially elite Percy Gryce over a marriage for love to the middle-class lawyer Lawrence Seldon by wondering whether "[s]ociety is a revolving body which is apt to be judged according to its place in each man's heaven; and at present it was turning its illuminated face to [her]." *Id.* at 79. Lily later reflects upon her attachment to an aristocratic lifestyle, saying that "I threw away one or two good chances when I first came out—I suppose every girl does; and you know I am horribly poor—and very expensive. I must have a great deal of money." *Id.* at 14. To characterize Lily's belief that death is more acceptable than losing social status, Wharton writes:

III. COLLEGE AND THE TWENTY-FIRST-CENTURY MIDDLE CLASS

The middle class as it exists in the twenty-first century arose from a combination of New Deal legislation, the growth of the economy resulting from World War II, and additional higher education opportunities offered to returning veterans.¹⁸ Soldiers coming home from the war benefited from the first GI Bill, which started a steady increase in the population reporting some level of higher education.¹⁹ Census data shows that in 1940 a mere 10% of the population reported having at least some level of college education.²⁰ By 1960 that figure exceeded 15%, and continued

She had learned by experience that she had neither the aptitude nor the moral constancy to remake her life on new lines; to become a worker among workers, and let the world of luxury and pleasure sweep by her unregarded. She could not hold herself much to blame for this ineffectiveness, and she was perhaps less to blame than she believed. Inherited tendencies had combined with early training to make her the highly specialized product she was: an organism as helpless out of its narrow range as the sea-anemone torn from the rock.

Id. at 486.

18. See Claire Suddath, *A Brief History of the Middle Class*, TIME, Feb. 27, 2009, available at <http://www.time.com/time/nation/article/0,8599,1882147,00.html> (identifying the modern image of the middle class originating from the post-World War II era starting with the GI Bill of 1944, which provided returning veterans money for businesses, college and home mortgages, allowing millions of servicemen to afford to own their own homes for the first time). In the wake of World War II, residential construction jumped from 114,000 new homes in 1944 to 1.7 million in 1950. *Id.* A colorful example in 1947 of “the American subdivision [being] born” was that of William Levitt turning 4,000 acres of potato farms in Long Island, New York (with thirty houses built in assembly-line fashion every day—each with a tree in the front yard) into the largest privately planned housing project in American history. *Id.* The New Deal Legislation that greatly affected the economy at least through the twentieth century includes the Securities Act of 1933, the Securities Exchange Act of 1934; the Banking Act of 1933 and the Banking Act of 1935 (creating the Federal Reserve Board and FDIC); the Social Security Act; The Wagner Act (also known as the National Labor Relations Act); The Tennessee Valley Authority Act; the National Industrial Relations Act (creating the Public Works Administration); Home Owner’s Loan Act; and the creation of the Federal Housing Administration. See generally Steven A. Ramirez, *The Law and Macroeconomics of the New Deal* at 70, 62 MD. L. REV. 515 (2003) (commemorating the seventieth anniversary of the New Deal legislation and describing the legislation’s effects on the economy through the twentieth century).

19. Servicemen’s Readjustment Act of 1944, Pub. L. No. 78–346, 58 Stat. 284 (codified as amended in scattered sections of 38 U.S.C.). The GI Bill provided veterans with funds for vocational training and higher education, subsidized mortgages for housing, and created low-interest business loans. See also PETER F. DRUCKER, POST-CAPITALIST SOCIETY 3 (1993); MICHAEL J. BENNETT, WHEN DREAMS CAME TRUE: THE GI BILL AND THE MAKING OF MODERN AMERICA 3–4 (1996); John Bound and Sarah Turner, *Going to War and Going to College: Did World War II and the G.I. Bill Increase Educational Attainment for Returning Veterans?*, 20 J. LAB. ECON. 784 (2002).

20. Empirical data from the census show a steady increase in the percentage of the population reporting some level of college education (1940: 10.01%, 1950: 13.17%, 1960: 16.45%, 1970: 21.25%, 1980: 31.88%, 1990: 39.20%, 2000: 50.96% and 2008: 55.41%). See U.S. CENSUS BUREAU, YEARS OF SCHOOL COMPLETED BY PEOPLE 25

to climb upward throughout the rest of the twentieth century.²¹ At the dawn of the twenty-first century, over half of the population reported having at least some level of a college education.²²

Other social and historical events beyond the positive effects of the GI Bill also affected the percentage of the population attending college. A desire to avoid the draft during the Vietnam War encouraged young men who had the means to go to and stay in college as well as graduate school.²³ Prior to the civil rights movement and the women's rights movement in the 1960s and 1970s, women and African-Americans did not have the same educational opportunities as white men. Before Congress passed Title IX, declaring gender discrimination illegal, far fewer women benefited from higher education and they were practically absent from non-traditional fields. In 1972, just before Title IX was passed, women accounted for approximately 40% of all undergraduate students. By 2005, women represented almost 60% of college students.²⁴ After the Supreme Court decided *Brown v. Board of Education* in 1954, and Congress passed its subsequent Civil Rights legislation, the educational opportunities for African-Americans slowly began to develop. By 1966, the number of African-Americans attending college was 340,000, and by 1982 this number increased to over one million.²⁵

There is no solid consensus establishing the boundaries of the middle class.²⁶ However, a strong argument can be made that income levels

YEARS AND OVER, BY AGE AND SEX: SELECTED YEARS 1940 TO 2008, <http://www.census.gov/population/socdemo/education/cps2008/tabA-1.xls> (figures based on number of people reporting any college as a percentage of all people age twenty-five and over).

21. *Id.*

22. *Id.*

23. W. Lee Hansen & Burton A. Weisbrod, *Economics of the Military Draft*, 81 Q. J. ECON. 395 (1967) (discussing college as a means to avoid the Vietnam draft); A. Singer, *The Effect of the Vietnam War on Numbers of Medical School Applicants*, 64 ACAD. MED. 567 (1989) (discussing draft deferment as a reason for an increasing number of medical school applicants during the Vietnam War); David Card & Thomas Lemieux, *Going to College to Avoid the Draft: The Unintended Legacy of the Vietnam War*, 91 AM. ECON. REV. 97 (2001); Joshua D. Angrist & Alan B. Krueger, *Estimating the Payoff to Schooling Using the Vietnam-Era Draft Lottery* (NBER Working Paper No. W4067, 1992), available at <http://ssrn.com/abstract=246873> (suggesting that an extra year of schooling acquired to avoid the Vietnam Era draft is associated with 6.6 percent higher weekly earnings); Chris Rohlf, *Estimates of the Willingness-to-Pay to Avoid Military Service and Fatality Risk: Evidence from the Vietnam Draft* (2006) (unpublished Ph.D. Dissertation, University of Chicago), available at http://economics.uchicago.edu/download/vietnam_draft.pdf.

24. See Lexie Kuznick & Megan Ryan, *Changing Social Norms? Title IX and Legal Activism Comments From the Spring 2007 Harvard Journal of Law & Gender Conference*, 31 HARV. J. L. & GENDER 367, 371 (2008).

25. William L. Taylor, *Brown, Equal Protection, and the Isolation of the Poor*, 97 YALE L.J. 1700, 1701-05 (1986).

26. See Suddath, *supra* note 18 (stating that the U.S. Government does not define middle class, and quoting current Vice President Joseph Biden as defining middle class as

are an important indicator of middle-class status, with a recognition that other factors play a role as to whether the person or family is truly middle class.²⁷ From an income perspective, middle class status can be described as not living from paycheck to paycheck, meaning the individual or family has the ability to afford a decent place to live, and can save a reasonable amount of money to at least partially afford a college education.²⁸ Although defining a level of income that approximates a middle class level is exceedingly difficult, a reasonable case can be made that an annual income in the \$50,000 to \$100,000 range is necessary, which represents the third and fourth quintiles used by economists for evaluating the burden for paying federal income taxes and represents just over forty-five million households out of the approximately 115 million households.²⁹

people who find it difficult to miss more than two paychecks). *See also* Chris Baker, *What is Middle Class? Income Isn't Necessarily Sole Measure*, WASH. TIMES, Nov. 29, 2003, at A1 (stating that economists and sociologists assert that there is no real middle class, and that "middle class" always has been more of a state of mind than an actual economic status). *See also* WILLIAM THOMPSON & JOSEPH HICKEY, *SOCIETY IN FOCUS: AN INTRODUCTION TO SOCIOLOGY* 202–212 (6th ed. 2007) (stating that the middle class is an ambiguously defined social class in the United States).

27. *See* WEBSTER'S NEW WORLD COLLEGE DICTIONARY 911 (4th ed. 1999) (defining "middle class" as "the social class between the aristocracy or very wealthy and the lower working class: people in business and the professions, highly skilled workers, well-to-do farmers, etc. are now generally included in the middle class). *See also* THOMPSON & HICKEY, *supra* note 26, at 209–11 (breaking down the middle class into upper and lower middle class, then defining the former as families making from \$35,000 to \$70,000, and the latter as families making \$75,000 to over \$100,000); LEONARD BEEGHLEY, *THE STRUCTURE OF SOCIAL STRATIFICATION IN THE UNITED STATES* 65–67 (4th ed. 2005) (defining the middle class as men making \$57,000 dollars per year and women making around \$40,000 per year); DENNIS GILBERT, *THE AMERICAN CLASS STRUCTURE: IN AN AGE OF GROWING INEQUALITY* 46–47 (7th ed. 2002) (identifying several factors as indicators of middle-class status including: education, salaried employment, and work autonomy); WHO ARE THE MIDDLE CLASS? CONGRESSIONAL RESEARCH SERVICE REPORT, March 2007 (breaking up census figures from 2005 into fifths and providing some possible definitions of middle class including, but not limited to, only households in the middle quintile, which make between \$36,000 and \$57,660; and households in the three middle quintiles, which make between \$19,178 and \$91,705).

28. *See* THOMPSON & HICKEY, *supra* note 26, at 204 (identifying college education as a major indicator of middle class status); Suddath, *supra* note 18 (stating that the typical middle class American is a homeowner with a mortgage, some college education and a professional or managerial job that earns them between \$30,000 and \$100,000 per year); INSIDE THE MIDDLE CLASS: BAD TIMES HIT THE GOOD LIFE, PEW RESEARCH CENTER REPORT 28 (2008), <http://pewsocialtrends.org/assets/pdf/MC-Middle-class-report.pdf> (stating that 68% of Americans who identify themselves as middle class are homeowners).

29. The U.S. Census Bureau does not define the middle class. *See* U.S. Census Bureau, *Income Inequality (Middle Class) – Narrative*, <http://www.census.gov/hhes/www/income/midclass/midclsan.html> ("The Census Bureau does not have an official definition of the 'middle class,' but it does derive several measures related to the distribution

Starting in the 1970s and continuing through the rest of the twentieth century into the early years of the twenty-first century, solid evidence exists illustrating that persons achieving a college degree have a significantly greater chance of earning a level of income consistent with middle-class status than those who just graduated from high school.³⁰ Empirical data also indicates that the gap in incomes between high school graduates

of income and income inequality. Traditionally, the Census Bureau uses two of the more common measures of income inequality: the shares of aggregate income received by households (or other income recipient units such as families) and the Gini index (or index of income concentration).”). For discussion of various measures of middle-class income see generally Elia Kacapyr et al., *Are You Middle Class?*, 18 AM. DEMOGRAPHICS 30 (Oct. 1996) (discussing various measures of middle-class income and income inequality); Gerald Prante, *New Census Data on Income Gives a Welcome Dose of Fact Checking to “Middle-Class” Rhetoric*, THE TAX FOUND., Sept. 11, 2007, available at <http://www.taxfoundation.org/files/ff102.pdf> (discussing the middle quintile and the middle 60% as possible representations of middle class or “middle income”); Nancy Birdsall et al., *Stuck In The Tunnel: Is Globalization Muddling The Middle Class?* (Ctr. on Soc. and Econ. Dynamics, Working Paper No. 14, August 2000), available at <http://www.brookings.edu/es/dynamics/papers/middleclass/midclass.pdf> (discussing different measurements of “middle class” and deciding upon a measure of between 75% and 125% of a population’s median household per-capita income). Measures of the middle class are often considered an arbitrary estimate. See Steven Pressman, *The Decline of the Middle Class: An International Perspective*, 41 J. OF ECON. ISSUES 181, 182 (2007) (“Because theory does not and cannot tell us who counts as middle class (unless we arbitrarily say the middle class is always the middle third of the income distribution, in which case the middle class can never decline because it is, by definition, always the middle one-third), any definition we choose is going to be arbitrary. But this arbitrariness does not mean that we cannot and should not attempt to define and measure the middle class.”). For purposes of this paper we will attempt to define the middle class as the population represented by the third and fourth quintiles according to data from the U.S. Census Bureau. In 2008, the third and fourth quintile comprised all households earning \$39,001 to \$100,240. See U.S. Census Bureau, *Income Limits for Each Fifth and Top 5 Percent of All Households: 1967–2008*, available at <http://www.census.gov/hhes/www/income/histinc/h01AR.xls>. See also U.S. BUREAU OF THE CENSUS, *PROJECTIONS OF THE NUMBER OF HOUSEHOLDS AND FAMILIES IN THE UNITED STATES: 1995 TO 2010*, available at <http://www.census.gov/prod/1/pop/p25-1129.pdf> (estimating the number of households in the U.S. at 114.8 million for 2010; 40% of this number which would represent two quintiles is 45.92 million households).

30. See Mortimer B. Zuckerman, *Right Down the Middle?*, U.S. NEWS & WORLD REP., June 6, 2005, at 2–3 (discussing obstacles to entry into the middle class and the need to do more to address the growing disparity of income between those with college and those with only a high school diploma); Sara Rimer, *Urban Schools Aiming Higher Than Diploma*, N.Y. TIMES, Jan. 17, 2008, at A1 (stating that students realize more than a high school diploma is needed to enter the middle class); John M. Mutz, *Higher Ed Challenge: Legislatures Need to Do Some Heavy Lifting in Higher Education to Keep the United States Globally Competitive*, ST. LEGIS. MAG., Feb. 2008, at 16 (“[W]e need a fundamental transformation to position our country for a world in which high school graduates are no longer guaranteed entry into the middle class.”); Matthew Continetti, *Postmodern Times: How Globalization Works*, WKLY. STANDARD, Jan. 18, 2010, at 2 (“For some high school graduates, a union card and factory employment continue to serve as doors into the middle class; the problem is those doors are being shipped to Asia.”); Barack H. Obama, Remarks by the President in State of the Union Address (Jan. 27,

and college graduates is growing. As late as the mid 1970s, a high school graduate had a reasonable chance of achieving equivalent earnings to college graduates.³¹ However, by the early years of the twenty-first century, this gap had substantially grown. College graduates clearly have a far better chance of achieving income levels in the \$50,000 range (the lower end of the middle-class range) while high school graduates on the whole are not even close to this range.³² The best evidence indicates that either a college education or equivalent training in technology skills is necessary in order to have a reasonable opportunity of earning enough money to enjoy a middle-class lifestyle from an economic point of view.³³

IV. K-12 EDUCATION FUNDING AND THE MIDDLE CLASS

Although a number of factors determine whether a person has a reasonable chance of obtaining a college education or training in skills with equivalent earnings potential,³⁴ access to high quality K-12 educa-

2010), available at <http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address> (“[A] high school diploma no longer guarantees a good job.”).

31. See U.S. CENSUS BUREAU, MEAN EARNINGS OF WORKERS 18 YEARS AND OVER, BY EDUCATIONAL ATTAINMENT, RACE, HISPANIC ORIGIN, AND SEX: 1975 TO 2007, available at <http://www.census.gov/population/socdemo/education/cps2008/tabA-3.xls>. Figures were adjusted using the Bureau of Labor and Statistics Inflation Calculator to 2007 dollars in the High School Adjusted and College Adjusted columns. See Inflation Calculator, Bureau of Labor and Statistics, <http://data.bls.gov/cgi-bin/cpicalc.pl>. The CPI inflation calculator uses the average Consumer Price Index for a given calendar year.

	High School Grad	College Grad	High School Adjusted	College Adjusted
1975	\$ 7,843	\$12,332	\$30,226	\$31,286
1980	\$11,314	\$18,075	\$28,469	\$45,482
1985	\$14,457	\$24,877	\$27,858	\$47,937
1990	\$17,820	\$31,112	\$28,270	\$49,356
1995	\$21,431	\$36,980	\$29,157	\$50,312
2000	\$25,692	\$49,595	\$30,935	\$59,716
2005	\$29,448	\$54,689	\$31,264	\$58,061
2007	\$31,286	\$57,181	\$31,286	\$57,181

32. *Id.*

33. This article recognizes that training in technology skills through high schools geared towards those goals, or community colleges with a trade-school emphasis, can provide significant and meaningful opportunities to young people to achieve earnings consistent with a middle-class lifestyle, and that for many, these opportunities offer far greater potential than a traditional four-year undergraduate education.

34. Other social, cultural and economic factors beyond the funding and quality of the K-12 school affect high school performance and therefore the ability of a student to be prepared to attend college. See Gillian E. Metzger, *Unburdening the Undue Burden Standard: Orienting Casey in Constitutional Jurisprudence*, 94 COLUM. L. REV. 2025, 2056 (1994) (discussing how teenage pregnancy dramatically increases the probability that a student will drop out of high school; only 2% of teen mothers graduate from

tion is essential for being prepared for college. Especially for poor and lower-middle class children, adequate funding of K–12 education is very important for the chance to go to college. Without access to solid K–12 education, of which adequate funding is an important component, poor and lower-middle class children will be unprepared for college and will have little or no ability to compete for scholarships necessary to achieve a level of higher education required for most employment opportunities that produce a middle-class level of income.³⁵

In 2008, I published an article, *The Vast Injustice Perpetuated by State and Local Tax Policy*, containing a substantial amount of empirical data surveying the K–12 funding in all fifty states, both from an overall perspective and focusing on high-poverty school districts.³⁶ While recognizing that it is impossible to pinpoint exactly the level of funding that meets an objective standard of adequacy, this article developed a methodology that approximates benchmarks of \$10,000 per child for overall K–12 funding, and \$14,000 per child in high-poverty school districts as creating a rebuttable presumption of adequate K–12 funding.³⁷ Because

college); Jonathan Guryan, *Desegregation and Black Dropout Rates*, 94 AM. ECON. REV. 919, 932 (2004) (noting that high school dropout rates among African-American students are more prevalent in segregated schools according to a study of 125 large urban school districts). A study by the Department of Education following eighth-grade students, grouped according to their math test scores, for twelve years, found large disparities in high school and college completion rates according to their family's socioeconomic status. MARYANN FOX ET AL., NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., YOUTH INDICATORS 2005: YOUTH TRENDS IN THE WELL-BEING OF AMERICAN YOUTH (2005). Poor students with high test scores were less likely to complete college than wealthier students with low test scores. Only 29% of poor children with high test scores completed college while 30% of wealthier children with low test scores completed college. Among wealthier children with high test scores 74% completed college.

35. See Robert Balfanz, *Can the American High School Become an Avenue of Advancement for All?*, 19 THE FUTURE OF CHILD. 17, 30–32 (2009) (discussing the necessity of a quality high school education to prepare students adequately for college, and describing how high schools can achieve higher levels of success in preparing students for college); David Stern, *Expanding Policy Options for Education Teenagers*, 19 THE FUTURE OF CHILD. 211, 228 (2009) (describing various policies that could improve high school education, including increased funding for schools that reach certain outcomes, such as student “enrollment in postsecondary education”); ROSS WIENER & ELI PRISTOOP, EDUC. TRUST, FUNDING GAPS 2006, HOW STATES SHORTCHANGE THE DISTRICTS THAT NEED THE MOST HELP 5 (2006) (finding that funding gaps between high- and low-poverty school districts exacerbate preexisting disadvantages faced by low-income students, resulting in an inability to educate these students up to “meaningful standards”).

36. Susan Pace Hamill, *The Vast Injustice Perpetuated by State and Local Tax Policy*, 37 HOFSTRA L. REV. 117 (2008) [hereinafter Hamill, *Vast Injustice*].

37. *Id.* at 123–26. The research team arrived at the \$10,000-per-child amount as the benchmark creating a rebuttable presumption of adequacy for overall K-12 funding by considering numerous education cost-out studies and the opinion of two prominent experts. *Id.* at 124 n.27. The research team arrived at the \$14,000-per-child amount creating a rebuttable presumption of adequacy for high-poverty districts by adopting the

adequate funding of K–12 education, especially in high-poverty districts, is a key feature towards gaining access to higher education or other training necessary to achieve middle class levels of income, these benchmarks are useful barometers furthering the conversation as to whether the states are doing their share towards increasing or at least sustaining the middle class.

From a funding perspective, most poor and lower-middle class children today do not have access to an adequate education that prepares them for college. Thirty-one of the fifty states inadequately fund K–12 education overall, and grossly underfund high-poverty school districts.³⁸ The level of inadequate funding is especially glaring in the high-poverty school districts, with most of these states spending well under \$10,000 per child—far less than the \$14,000 needed to establish a rebuttable presumption of adequacy.³⁹ Although the funding of high-poverty school districts in the remaining nineteen states is somewhat better, with most exceeding \$10,000 per child, most of them still fail to adequately fund high-poverty school districts.⁴⁰

This empirical evidence is a bad report card as far as the future of the middle class is concerned, and makes a strong case that the states are not doing their parts towards sustaining the middle class. Given the persistence of inadequate K–12 education, especially in areas with large numbers of children from families below the middle class, it is not hard to understand why the middle class in America is declining. Although the decline of the middle class, as well as strategies to reduce this trend, has many facets and complex components, the evidence indicating that adequately funded K–12 education is a necessary foundation for access to higher education and other education that will sustain middle-class incomes makes a compelling case. Both the states and the federal government need to more heavily invest in K–12 education or else face the devastating economic and political consequences of a shrinking middle class.⁴¹

V. THE DECLINE OF THE MIDDLE CLASS RAISES MORAL ISSUES

My article published in 2008 surveying the K–12 funding situation across the fifty states was the fourth of a series of articles examining tax policy from a moral perspective. I embarked on this course of study and

Education Trust's 40% adjustment (40% of \$10,000 equals \$14,000), and showing that this adjustment is reasonable and conservative based on many state-sponsored cost-out studies' estimation of the percentage increase required for high-poverty districts. *Id.* at 126 n.31.

38. *Id.* at 129–138, app. A, tbl. 2.

39. *Id.*

40. *Id.* 135–138, app. A, tbl. 2.

41. *See supra* notes 26–33 and accompanying text.

spiritual journey while studying theology at the Beeson Divinity School of Samford University, a conservative Christian seminary. I noticed the disconnect between the religious values that most of Alabama's population held and the state's regressive tax policy, which oppresses the poor and fails to come even close to adequately funding K–12 education. The resulting article, the first of the series published in 2002, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, details why Alabama's over-90% Christian population, especially the political and religious leaders, have a moral obligation to work towards easing the tax burden inflicted on lower and middle-income Alabamians, and increasing the funding of K–12 education.⁴²

This article caused an intense reaction across Alabama, prompted a conservative Republican governor to propose major tax reform efforts that would have included a substantial increase in K–12 funding, and received national attention.⁴³ In response to numerous attempts to apply the theological analysis of this article to tax policy beyond Alabama, I published two additional articles. The second in the series, published in

42. Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1, 3 (2002) [hereinafter Hamill, *Argument for Tax Reform*]. Several months after this article was published it (along with selected editorials, press coverage and chapters explaining the context behind the article) was re-printed in paperback book form. SUSAN PACE HAMILL, *THE LEAST OF THESE: FAIR TAXES AND THE MORAL DUTY OF CHRISTIANS* (2003).

43. A newspaper article published while the article was still in manuscript form created an enormous response in Alabama. See Sam Hodges, *Tax Critic: Professor Blasts 'Immoral' Structure: Hamill's 77-Page Paper Says State Hammers the Poor*, MOBILE REG., Aug. 11, 2002, at A1. See also Shailagh Murray, *Seminary Article Sparks Alabama Tax Code Revolt*, WALL ST. J., Feb. 12, 2003, at A1; Tony Allen-Mills, *Alabama Puts Bush Tax Cuts to Biblical Test*, TIMES (London), June 15, 2003, at 25; Jay Reeves, *Law Professor Summons Jesus As a Witness for Tax Reform*, WASH. POST, Mar. 23, 2003, at A10; Adam Cohen, *What Would Jesus Do? Sock it to Alabama's Corporate Landowners*, N.Y. TIMES, June 10, 2003, at A28; Bonna de la Cruz, *Tax System Unjust, Alabama Professor Says*, TENNESSEAN, Aug. 1, 2003, at A3; Kevin Horrigan, Editorial, *Alabama Asks Itself, WWJT? (What Would Jesus Tax?)*, ST. LOUIS POST-DISPATCH, Aug. 3, 2003, at B3; Francis Wilkinson, *Divine Right: From the Belly of the Southern Conservative Beast, a Small Group of Christians Set Out to Change the Way the Pious Think About Politics*, AM. PROSPECT, Aug. 28, 2003, http://www.prospect.org/cs/articles?article=Divine_right; Christopher Spencer, *Practice Faith by Revising the Tax System, Advocate Says*, ARK. DEMOCRAT-GAZETTE, Aug. 28, 2003, at 15; Marc Kaufman, *What Would Jesus Tax*, SCI. & SPIRIT, Sept. –Oct. 2003, at 10–13; Jason Zengerle, *Not a Prayer*, NEW REPUBLIC, Sept. 22, 2003, at 13–15; Jane Lampman, *Inequity: Is It A Sin?*, THE CHRISTIAN SCI. MONITOR, Dec. 24, 2003, at 14; Julie Porter, *The Lawyer, the Bible and the Governor*, SOJOURNERS MAG., Apr. 2004, at 12–17; Jeffrey Weiss, *Tax Reformer Cites Christian Theology*, DALLAS MORNING NEWS, May 1, 2004, at 5G; *Unjustly Taxed: The Bible and Politics in Alabama*, CHRISTIAN CENTURY, Sept. 21, 2004; Collin Hansen, *"Jesus Tax" Plan Dies: Alabama Fiscal Debate Exposes a Divide Between Christians*, CHRISTIANITY TODAY, Nov. 2003, at 25–26. The article was placed on the New York Times' list of best ideas for 2003. See Jason Zengerle, *The 3rd Annual Year in Ideas: Biblical Taxation*, N.Y. TIMES MAG., Dec. 14, 2003, at 52–54.

2004, explores how moral philosophies that are not faith-based evaluate tax policy.⁴⁴ The third in the series, published in 2006, substantially expands the theological analysis of the 2002 article and provides extensive faith-based moral analysis that can be used to evaluate any tax policy structure.⁴⁵

The 2006 article establishes that Judeo-Christian standards of justice require that “the community’s laws ensure that each individual enjoys a reasonable opportunity to reach his or her potential.”⁴⁶ The moral requirement of reasonable opportunity from a faith-based perspective comes from an interpretation of the creation account in the Book of Genesis, certain Old Testament laws and orations from the Hebrew Prophets, and the teachings of Jesus Christ that elevate this scripture as reflecting spiritual intent beyond the letter of the law.⁴⁷ This article also carefully examines the fundamental constitutional doctrines of the separation of church and state, and illustrates that evaluating tax policy under Judeo-Christian principles not only passes constitutional muster, but is also appropriate under the norms of a democracy.⁴⁸

44. See Susan Pace Hamill, *A Moral Perspective on “Big Business” Fair Share of America’s Tax Burden*, 1 U. ST. THOMAS L.J. 857, 857–58 (2004) [hereinafter Hamill, *Moral Perspective*]. This article illustrates why the secular-based moral framework of utilitarianism provides no useful guidance for tax policy; why the framework of egoism (also known as objectivist ethics) favors flat models; and why virtue ethics favors progressive models. *Id.*

45. Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671, 673 (2006) [hereinafter Hamill, *Evaluation*].

46. Hamill, *Moral Perspective*, *supra* note 44, at 121. For the extensive theological analysis establishing the moral requirement of reasonable opportunity, see *id.* at 685–89. My 2002 article evaluating Alabama’s tax policy from a moral perspective articulated this standard in terms of requiring “minimum opportunity.” See Hamill, *Argument for Tax Reform*, *supra* note 42, at 8. After additional research and further reflection on the evangelical sources used in the 2002 article, as well as consideration of a conservative interpretation of mainline Protestant, Catholic, and Jewish perspectives, my 2006 article articulates this standard in terms of “reasonable opportunity,” a somewhat higher threshold.

47. See Hamill, *Moral Perspective*, *supra* note 44, at 685–89. The creation account recognizes that all human beings are created in the image of God and have divinely inspired potential to carry out God’s work on earth. The Old Testament law and prophets contained certain iron-clad standards of justice (which took the form of releases from debt and servitude as well as land tenure rights) designed to ensure that all people had a reasonable opportunity to restore themselves to self-sufficiency if either by bad luck or bad choices they fell into poverty. The New Testament teachings affirm all these standards of justice. *Id.*

48. *Id.* at 675–80. See also Hamill, *Vast Injustice*, *supra* note 36, at 147–48 nn.118–119. Except for two states—Alaska and Hawaii—a majority (and in many states a substantial majority) of the people claim to have adopted the moral values embodied by Christianity or Judaism. Because most of the people identified as “Protestant” in Utah are members of The Church of Jesus Christ Latter-day Saints, the treatment of Utah as a majority Judeo-Christian state raises other issues. *Id.* at 147 n.118.

Twenty-first century American standards dictate that “reasonable opportunity” means access to “minimum subsistence . . . adequate education and job training, as well as decent healthcare and housing.”⁴⁹ Although my articles recognize that the Judeo-Christian ethical principle of reasonable opportunity requires the funding of many vital services with tax revenues, focusing first on Alabama and then on all fifty states, my articles identify the funding of primary and secondary education as one of the most important items in government budgets.⁵⁰ In addition, “[c]hildren, the most powerless and voiceless segment of the population, are dependent on their parents, and when parents lack ability or resources, the public policy of the state must ensure that they have a chance to develop their potential.”⁵¹ Although failing to adequately fund K–12 education compromises the ability of all children to develop their potential, those from poor and low-income families suffer the greatest negative consequences from this inadequate funding because their parents have far less ability to make up for the shortfall.⁵²

When I first completed my 2002 article evaluating Alabama’s tax policy and K–12 funding from a moral perspective, I assumed that most states other than a few other Southern states were considerably fairer to low-income people and invested considerably more in K–12 education funding, thereby offering low-income children a greater chance to achieve a solid K–12 education and a shot at higher education. By the time I completed my 2006 article, I believed perhaps as many as seventeen states were similar to Alabama, which was “a cancer on the nation, growing but still contained.”⁵³ My 2008 article established the alarming conclusion that Alabama’s state and local tax policy and inadequate funding of K–12 education broadly represents the rule rather than the exception, a cancer that “has metastasized all over the country, including the Northern regions.”⁵⁴

I accepted the invitation to submit a piece to this issue dedicated to exploring the rise and fall of the middle class in order to add the faith-based moral arguments in favor of fairer tax policy and greater investment in K–12 funding I have made since 2002. This furthers the conversation addressing the problems of a shrinking middle class and contributes strong arguments in favor of adopting state and federal policies designed to enhance the middle class. Although none of my previously published articles explicitly make this statement, the standards of justice contained in the moral principles of Judeo-Christian ethics clearly can be invoked to support all public policy designed to at least sustain

49. *Id.* at 121.

50. *Id.* See also Hamill, *Argument for Tax Reform*, *supra* note 42, at 7.

51. Hamill, *Vast Injustice*, *supra* note 36, at 121–22.

52. *Id.* at 122.

53. *Id.* at 150.

54. *Id.* at 151.

and preferably enhance the middle class. This includes greater investment in K–12 education in order to allow all children—not just those from upper-class families—the opportunity to achieve a good K–12 education that prepares them for college or other training.

Enjoying a middle-class level of income provides a person with much more than just a level of material comfort. Persons within the middle class, as well as those enjoying income levels above that, have greater opportunities to give back to society through charitable and other efforts. Freed from the grind of living on the edge, people within the middle class, if they are so inclined, have a far greater ability to develop their divinely inspired talents in the arts or other areas.⁵⁵ A community where everyone has a chance to be at least middle class, and where many achieve that goal, fosters contributions that would otherwise remain untapped and buried beneath the rubble of poverty and day-to-day struggles for survival typical of persons and families below the middle class. Simply put, given that an overwhelming majority of Americans claim Judeo-Christian ethics as their moral compass, the current trend of a shrinking middle class raises serious moral concerns as well as economic and political concerns.⁵⁶

Significant evidence documented in my articles, as well as the fine work of many others, indicates that failing to invest in education is causing our nation to lose significant economic and political ground.⁵⁷ One can make strong arguments without invoking the standards of justice embodied in the moral principles of Judeo-Christian ethics that the negative consequences of a shrinking middle class will reverberate far beyond those directly affected. Compelling economic, political, and other secular-based arguments exist to support a variety of public policies, including greater investment in K–12 education, that are designed to halt the shrinking of, and instead to enhance, the middle class.⁵⁸

However, despite these compelling arguments, I believe the moral principles of Judeo-Christian ethics add something very important to this conversation that the secular arguments for sustaining and enhancing the middle class cannot provide. The “elephant in the room” that most refuse to acknowledge is that public policy that halts the trend of shrinking the middle class and works towards enhancing the middle class will require sacrifice from almost everyone, especially those enjoying the highest levels of wealth and power. Due to the inevitable human condition that gravitates towards greed and short-term gain centered on oneself, it

55. Hamill, *Evaluation*, *supra* note 45, at 685–91.

56. *Id.*

57. Hamill, *Vast Injustice*, *supra* note 36, at 152, n.134. See also *supra* notes 2, 3, 4, 5, 18, 26, 28, and 30. See also JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 59, 76, 218 (2002) (noting the importance of adequate investment in primary and secondary education as a key component to economic development with globalization).

58. Hamill, *Vast Injustice*, *supra* note 36, at 152.

is extremely difficult to persuade most people to agree to public policy that requires short-term sacrifice. This includes sacrifice for things such as greater tax revenues supporting the adequate funding of K–12 education, despite the indisputable evidence indicating that this short-term sacrifice will result in long-term gain for everyone. By insisting from the highest moral and spiritual place that those who claim to be of faith embrace a high-sacrifice approach to all aspects of their lives, and fight against baser instincts that tempt us otherwise, the moral principles of Judeo-Christian ethics offer a significant addition to this conversation concerning the decline of the middle class.⁵⁹ I believe this holds the key to reversing the current trend and getting back on track towards building a community of an enhanced middle class.

59. See Hamill, *Moral Perspective*, *supra* note 44, at 680–81 (discussing greed as an inevitable fact of the human condition due to the Fall of humankind and as the reason why the law must compel taxes, and asserting that the Bible contains standards of justice that cannot be replaced with beneficence and charity). The article also discusses the New Testament's teachings on wealth, and that true followers of Jesus Christ accept high levels of sacrifice in accordance with his teachings. *Id.*' at 698–704.

