Life and Debt

By Harvey M. Moore

In July, the Federal Trade Commission brought together debt collectors, consumer advocates, regulators and judges in Chicago to discuss the debt collection process. The meeting had the potential to become yet another one of the summer's knock-down, drag-out policy boxing matches. But it was refreshingly constructive, largely focused on discussing real solutions to resolving consumer debt issues. Considering the magnitude of our nation's consumer indebtedness, it's important to keep this momentum going.

Americans currently owe a collective $2.5 trillion in consumer debt. This is debt that *excludes* mortgages and home equity loans. Resilient consumers are taking positive steps to repay their debts and reorganize their personal balance sheets. In the past quarter, according to the Federal Reserve, outstanding consumer debt has decreased by more than $33 billion.

Much more evidence of this encouraging behavior was unearthed recently, when the National Association of Retail Collection Attorneys (disclosure: I am a member of the board of directors) commissioned a nationwide survey of 1,000 consumers to gauge views and attitudes on debt management and collection. Survey findings show that Americans are determined to get back on track financially. Rather than playing the victim, most consumers are strongly focused on paying their debts on time, protecting their credit rating and being able to access affordable credit in the future. In fact, 92 percent of consumers say that actively collaborating with the collection industry to resolve their unpaid debts is preferable to contesting the debt in court. These sentiments were echoed in a recent poll by the Associated Press. Data also confirmed that Americans are not interested in prolonging the debt repayment process. Last but not least, consumers have a keen understanding of the ill effects that non-payment of debt has on the nation's economic situation.

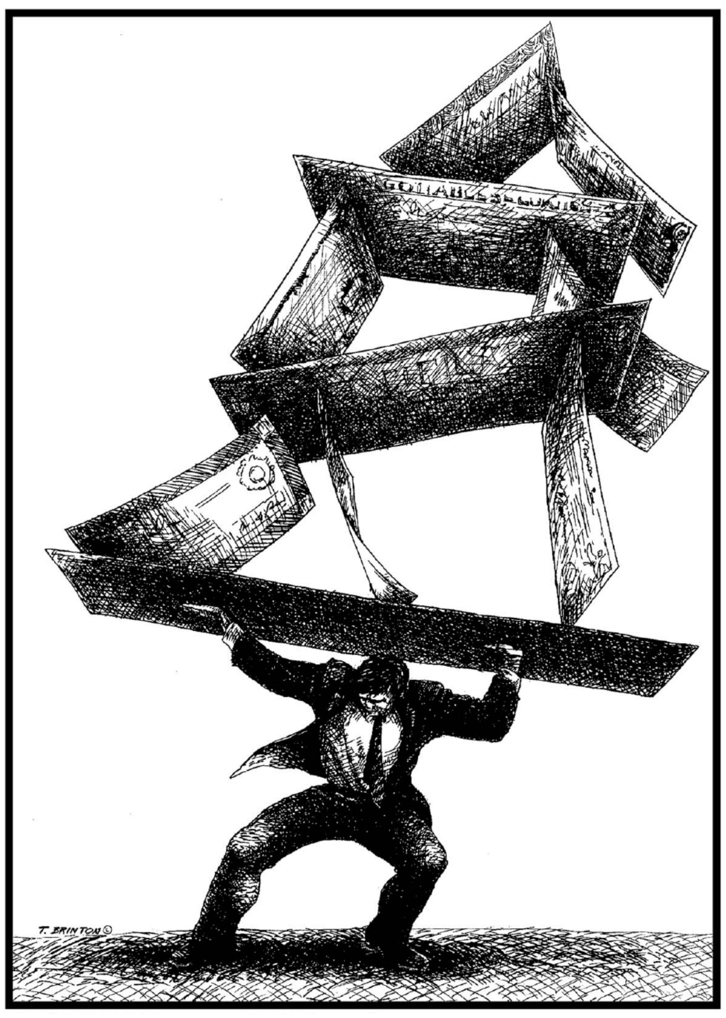
Unfortunately, public policy has not kept pace with the nation's economic realities or consumer behavior. The current regulatory framework works to discourage consumers from repaying what they owe, creating a climate that encourages filing lawsuits to halt the debt repayment process.

The onslaught of these suits has been described by the 6th U.S. Circuit Court of Appeals in *Federal Home Loan Mortgage Corp. v. Lamar,* 503 F. 3d 504, (6th Cir. 2007), as generating a "cottage industry [of lawyers] that [do] not bring suits to remedy the 'widespread and serious national problem' of abuse that the Senate observed in adopting the legislation, nor to ferret out collection abuse in the form of 'obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.' Rather, the inescapable inference is that the judicially developed standards have enabled a class of professional plaintiffs [who] upon receiving a debt collection letter that contains some minute variation from the statute's requirements, immediately exclaims 'This clearly runs afoul of the FDCPA!' and — rather than simply pay what he owes — repairs to his lawyer's office to vindicate a perceived 'wrong.'"

Unnecessarily prolonging debt not only affects ongoing access to credit, but also causes consumers to spend lengthy periods of time in court openly discussing their personal financial matters. Survey data indicates that consumers place a very high value on keeping their financial situation private and not taking unnecessary time off work to attend court proceedings.

The increased number of lawsuits involving these types of claims has unnecessarily inflated the costs and expenses of collecting legitimate, undisputed consumer debts. In California this situation is particularly serious. In an annual survey, "Lawsuit Climate 2008: Ranking the States," Harris Interactive measured how reasonable and balanced the tort liability system is perceived by U.S. business. The report shows that California is one of the worst states in the country for lawsuit abuse.

At the same time, policy reform is being proposed that is inconsistent with consumer protection. The legal collection industry has historically fallen under the jurisdiction of state law. Debt collecting attorneys are already governed by state bar associations and rely on state regulations to guide their legal practices. This approach is efficient and ensures uniformity in regulations. Recent discussions around changes to debt collection law have proposed the imposition of additional federal regulations. This approach would create an unnecessary layer of additional law, which could cause confusion and inconsistencies in enforcement. Debt collection attorneys are already working at the state level with creditor bar associations, consumer bar associations and judicial councils to achieve a more efficient state court process, while ensuring that both defendants and plaintiffs are treated fairly throughout the process. Recently, in California, through conversations with the judicial council and the consumer bar, the creditor bar was able to amend a rule that reduced the appearances necessary to check on service of process, answer/default, and trial setting/judgment. These changes benefited the court, the consumers and the creditor bar. Given the subtle nuances of state law, local players are best positioned to have these knowledge-based conversations. Consumer polling by the National Association of Retail Collection Attorneys further indicates that the majority of Americans support the current framework of state regulation. Sixty-eight percent of consumers believe their rights are better protected at the state level than by the federal government. With this in mind, states must continue to enforce industry practices.



This month, the FTC will hold another public workshop in San Francisco titled "Debt Collection: Protecting Consumers." For consumers to regain their financial footing, it is critically important that public policy encourages an efficient, effective and fair collection process. Unnecessary and costly delays in debt repayment — especially in the form of unmeritorious lawsuits — are not what consumers want and certainly not what will help our economic recovery efforts. While it is important for all of us to take the time to really think through policy reform in this critical area, consumers are not waiting themselves to take action. Debt collection law must evolve quickly to keep pace with consumer behavior and changes in the marketplace.

Harvey M. Moore is president of The Moore Law Group in Santa Ana, a member of the board of directors of the National Association of Retail Collection Attorneys and president of the California Creditors Bar Association.

Labor of Love: Holiday Should Be a Reminder of Working Families' Struggles

By Brian Miller

Every year, we celebrate Labor Day to honor the work of everyday Americans who built this country brick by brick, community by community. It's an honorable holiday that pays tribute to honorable work.

While it's always good to give thanks, we need much more than well wishes and a cheer of support. We need to ensure that the rules that govern our economic system, whether those rules come from Wall Street or from Washington, treat all Americans, particularly those who are the backbone of our economy, with dignity and respect. That's what Labor Day is truly about.

From the time the first Labor Day was held, Americans understood that even what we call a "free" market still has rules that govern its actions; rules that can either work for or against the average American. That's why they fought for a more just set of rules, a fight that ultimately led to the 40-hour workweek, the first minimum wage laws, the abolition of child labor and workplace safety standards.

Over the last 30 years, we've seen the pendulum swing back the other way. While many of the victories won in those early years still stand, we've seen an erosion of the right of workers to organize, the weakening of worker and public safety standards, and wholesale rollback of our tax system's more progressive elements.

All we have received in return is a shift in fortunes to the wealthiest individuals in our economy, with little or none of the promised "trickle down" for the rest of America.

From 1947 to 1979, when our country grew as a whole and prosperity was broadly shared, we saw incomes rise across all income groups. As measured using the bottom, middle, and top 20 percent of income-earners, the incomes of the bottom grew by 116 percent, the middle grew by 111 percent, and the highest income-earners saw their income rise by 86 percent. That's what broad prosperity looks like.

By comparison, from 1979 to 2005, income growth was almost entirely focused on the top income-earners. The bottom group actually saw their incomes decline slightly; while the middle group saw their incomes grow by only 15 percent. Meanwhile, the top group of income-earners saw a 53 percent growth of income. The top 1 percent alone saw their incomes grow by 81 percent. While income and wealth grew at the top, the rest of America was treading water.

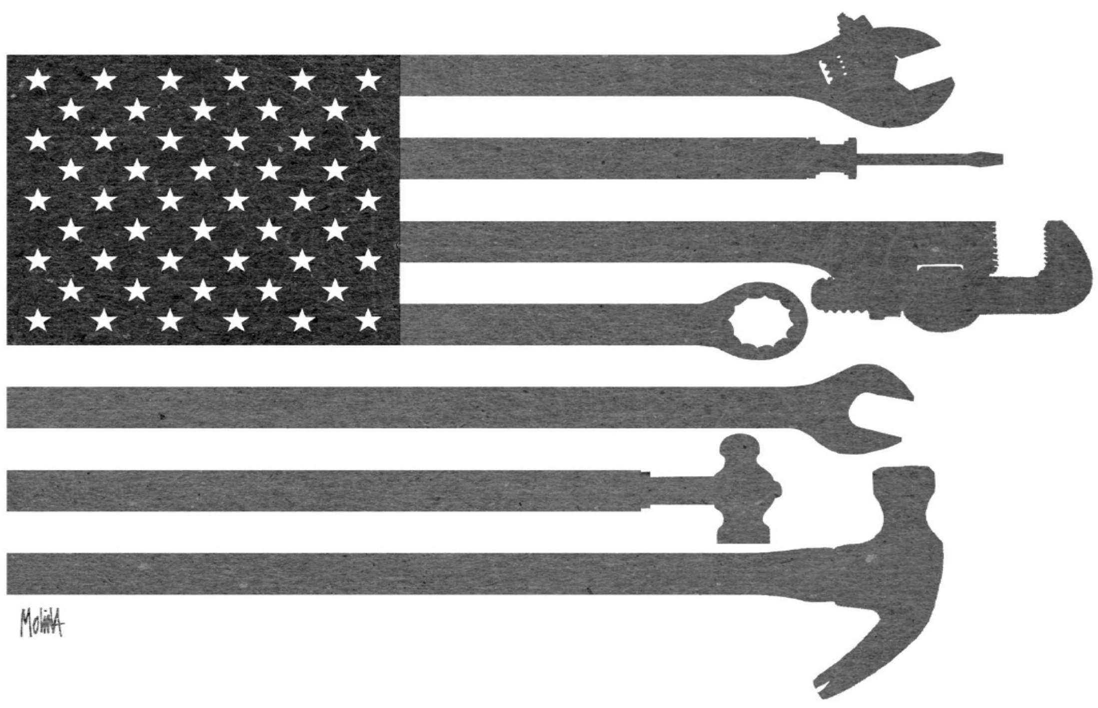
In fairness, many Americans were excluded from this earlier period of broad growth, particularly African-Americans and other people of color. By the time some of the nation's most oppressive and racist policies were done away with, incomes at the bottom had already stagnated, leaving few opportunities for people of color to advance. Nonetheless, history shows that when the rules that govern our economy are designed well, Americans in all income groups can share in the prosperity. That should be our goal.

The good news is that Americans are waking up and demanding change. Public awareness of economic inequality has never been higher, and the economic crisis has pulled back the curtain on the failed policies of the past.

Now is the time for average Americans to take back the reins of government. Several key issues will likely come up in Congress soon that can help restore a more broadly shared prosperity and strengthen the common good.

First, we must repeal the Bush tax cuts for the wealthy. Those unnecessary and damaging tax cuts helped fuel the massive budget deficits we now face, while exaggerating the income and wealth disparities.

Second, we must preserve a strong and effective federal estate tax. This fall, Congress will begin debating the future of the estate tax. A strong estate tax is essential to an economy that rewards hard work and not just the fortune of one's birth.



Third, we need to help working families hold onto their homes, the single most important asset for most low and middle-income families, amidst the current housing crisis. Additionally, we need to support policies that enable low-income families, and particularly people of color who were left out of earlier economic booms, to attain home ownership and build assets.

With a comprehensive strategy for rebuilding our middle class, we can do more than pay lip service to the work of Americans on Labor Day. We can instead genuinely and honestly show our commitment to honoring the work of all Americans by passing policies that help lower and middle-income Americans share in the nation's prosperity.

Brian Miller is executive director of United for a Fair Economy, a national organization that works to build awareness of the dangers of vast inequalities of wealth and power.

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Letters to the Editor

A Convention Might Be Necessary, but Outdated Thinking Is Not

I read with amusement Jeffrey Lowe's indictment of the two-thirds requirement for budgets and taxes, and his call to replace it with a simple majority, because the very basis for his objection proves the need for the higher threshold ("Fixing California's Convoluted Constitution Is the Only Way to Move Forward," Aug. 31). Lowe is bothered that a "minority party" is "courted with concessions" to pass what he thinks are "badly needed" taxes. That reflects the very type of outmoded thinking that has brought California to its financial knees.

Minority control of majority conduct is hardly objectionable; indeed, for example, it is the very essence of the First Amendment. Such control is just as important for California regarding the imposition of taxes. Decades of Democratic rule have brought this once-great state to "galloping ruin" (to quote Mr. Lennon), in large part because of taxes and ever-expanding budgets. Yes, Republicans have played their part as well, but the two-thirds requirement is the last and best hope for stopping the ever-increasing encroachment on the finances of the citizenry.

While Lowe may be right that a constitutional convention is necessary, his view represents the problem, not the solution. More then ever, tax-and-spend politicians must be stopped cold; indeed, the two-thirds requirement should be applied to fees, the ever-popular "end run" used by politicians to effectively raise taxes. What Lowe considers "badly needed" taxes is, in many case, more accurately called naked "redistribution of wealth." And most citizens have had enough.

Stephen McNamara,
Irvine

Insurance Rule Will Actually Harm Clients

The California Supreme Court, in its infinite wisdom, has adopted an ethics rule that will require, as of Jan. 1, 2010, that attorneys notify their clients in writing if the attorney does not carry malpractice insurance or if that insurance lapses ("State Supreme Court Adopts Malpractice Rule," Aug. 28). The stated reason for this new rule is, of course, the reason given for most rules that apply to lawyers but to no other profession or business, namely: consumer protection.

This paternalistic approach, in addition to being arrogant and condescending, will actually harm those clients whom the rule, ostensibly, is intended to protect the most, that is, the least educated and most unsophisticated of clients.

One might ask: "How will this new rule harm the least educated and most unsophisticated of clients?" It's simple. This class of clients is most likely to be, shall we say, of modest means.

The practice of law is a business that provides a service. When government adopts a rule, imposes a tax, or by other means increases the cost of providing a service, businesses that provide that service will pass that increase in costs on to their customers or, in the case of attorneys, to their clients. Thus, attorneys who currently do not carry malpractice insurance — most likely sole practitioners and small firm attorneys — can, for the most part, be expected to purchase malpractice insurance and to pass that cost on to their clients. Attorneys who currently carry malpractice insurance, seeing an opportunity to recover costs that their previously uninsured competitors must now bear, can now raise their fees while still remaining competitive.

The class of clients most likely to be affected by an increase in legal fees is, more than any other class of clients, the least likely to be able to afford the services of an attorney. So it is completely illogical that, on the one hand, we constantly hear how concerned the California judiciary says it is about "access to justice" for persons of modest means and how helpful it would be to trial court judges if more litigants were represented by counsel and, on the other hand, this same judiciary adopting a rule which practically guarantees that fewer litigants will be able to afford an attorney, especially now, when the economy is as bad as its been since the Great Depression.

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