

# Globalization and the Reproduction of Hierarchy

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Over the past decade, the federal government has increasingly taken steps to lift barriers to trade and financial flows into and out of the United States. This liberalization of U.S. economic barriers has been mirrored by similar efforts of governments around the world. These steps, together with gains in technology, have ushered in an era of "globalization."<sup>1</sup> The global liberalization of economic flows, according to classical economic theory, should maximize the efficient allocation of world resources and generate benefits for all. Even if globalization brings increased aggregate gains, however, it is not clear that the distribution of those gains accords with social justice. Without intervention, globalization may instead lead to increased socioeconomic inequality and economic volatility.<sup>2</sup>

One troubling aspect of globalization is that it may tend to concentrate costs on populations that are already socioeconomically disadvantaged. Globalization is reorganizing industrialized economies into hierarchies in which income is increasingly related to skill level. At the same time, long-existing barriers to entry into high-skill occupations have not subsided, and arguably continue to strengthen. Racial minorities disproportionately occupy the low-skilled ranks of the workforce. Consequently, their impoverishment may be disproportionately likely to remain entrenched, even as the globalization-driven economy booms. This disproportionate vulnerability arises from socioeconomic dynamics not just of race

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<sup>1</sup> See *infra* Part II (defining globalization). See generally International Monetary Fund, World Economic Outlook 1997: Globalization: Opportunities and Challenges (1997) [hereinafter IMF Survey]; United Nations Development Programme, 1999 Human Development Report: Globalization with a Human Face, available in <<http://www.undp.org/hydr/report.html>> [hereinafter Human Development Report].

<sup>2</sup> See Chantal Thomas, Fast-Track Trade Legislation: A Case Study of the Law and Politics of Globalization (unpublished manuscript, on file with author).

but also of income and geographical space. Together, these dynamics disproportionately relegate racial minorities to impoverished neighborhoods in inner cities.<sup>3</sup>

This Article warns against the temptation among policymakers to view the costs of adjustment to the new globalized economy as natural and inevitable. Many of these costs, particularly in the case of inner-city racial minorities, derive from a socioeconomic hierarchy that lawmakers have helped to create and maintain. Thus, this Article looks at the impact of globalization on racial minorities. In doing so, it responds to two central inquiries of the LatCrit IV Conference. The first inquiry searches for connections that link Latina/o communities to other racial minorities. While the particular dynamics described in this Article differ across groups, the general dynamic of disproportionate vulnerability affects African Americans, Latina/os, and other racial minorities. A second inquiry of LatCrit IV looks beyond conventional boundaries of civil rights discourse, as does this Article by looking at contemporary economic realities for racial minority groups.

If "laissez-faire" policy accompanied and justified the harsher results of the early Industrial Age,<sup>4</sup> it may well reemerge to accompany and justify those brought on by the rise of the Information Age.<sup>5</sup> The policy implications of such latter-day laissez-fairism would be that government should not "intervene" to prevent the casualties of globalization, even if those casualties occur dispropor-

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<sup>3</sup> For discussions of the intersection of racial, geographic, and class segregation, see Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993), John O. Calmore, *Racialized Space and the Culture of Segregation: "Hewing a Stone of Hope from a Mountain of Despair"*, 143 U. PA. L. REV. 1233 (1995), and Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841 (1994).

<sup>4</sup> In its worse forms, such policy condones Social Darwinism, a theory whose purpose is to "justify social inequality," by explaining it as a product of "survival of the fittest" (a term coined by Social Darwinist Herbert Spencer). See SARAH BLAFFER HARDY, *THE WOMAN THAT NEVER EVOLVED* 12-13 (1981); see also RICHARD HOFSTADTER, *SOCIAL DARWINISM IN AMERICAN THOUGHT* (1992); Owen D. Jones, *Sex, Culture, and the Biology of Rape: Toward Explanation and Prevention*, 87 CAL. L. REV. 827 n.233 (1999); Howard Schweber, *The "Science" of Legal Science: The Model of the Natural Sciences in Nineteenth-Century American Legal Education*, 17 LAW & HIST. REV. 421 (1999).

<sup>5</sup> Most commentators agree that "globalization" was triggered in significant part by developments in transportation and communications technology that allowed both production and products to be dispersed over ever-wider areas. See *infra* notes 158-59. The cultural effects of this were memorably foreseen by Marshall McLuhan in his prediction of a "global village." See MARSHALL MCLUHAN, *UNDERSTANDING MEDIA, THE EXTENSIONS OF MAN* (1964).

tionately within certain socioeconomic groups, because such casualties are the result of an economic “evolution” that is both natural and necessary.<sup>6</sup> Classical and neoclassical proponents of the market tend to portray certain economic processes — industrialization in the old days, globalization in the new — as independent of government. President Clinton’s statement that the “technology revolution and globalization are not policy choices, they are facts” is a good example of the view of globalization as an autonomous phenomenon.<sup>7</sup> From this perspective, such economic processes are also said to be “necessary” aspects of economic progress despite the costs they impose. According to this view, the best course for government is to allow these costs because of the long-term benefits of the process.<sup>8</sup> Contrary to this perspective, in his famous dissent to *Lochner v. New York*, Oliver Wendell Holmes criticized the Supreme Court’s attempts to portray an “unregulated” market and its outcomes as natural and inevitable.<sup>9</sup> After a century of realist and critical legal theory following from Holmes’ early insights,<sup>10</sup>

<sup>6</sup> For an account of the relationship between classical economics and evolutionary theory in the law, see Herbert Hovenkamp, *Evolutionary Models in Jurisprudence*, 64 TEX. L. REV. 645 (1985). Hovenkamp explained:

The earliest Darwinians who called themselves “sociologists,” particularly Herbert Spencer and William Graham Sumner, were thoroughgoing economic determinists. For this reason they believed that social science must merely describe the world, using Darwin’s economic theory of natural selection to discover the natural rules of resource allocation in human society, but remaining powerless to change these fundamental laws. These evolutionary social scientists were called Social Darwinists. *They influenced American jurisprudence greatly, particularly the constitutionalization of the unregulated market today known by the name of “substantive due process,” or “liberty of contract.”*

*Id.* at 654 (emphasis added).

<sup>7</sup> *A Closer Look at Globalization*, 144 CONG. REC. E1660-01, E1660 (daily ed. Sept. 9, 1998) (remarks of Rep. Lee H. Hamilton of Indiana).

<sup>8</sup> This sort of discussion has been common among government decisionmakers faced with choices whether to facilitate globalization. See, e.g., *Trade Barriers Would Hamper U.S. Competitiveness in Information Technology*, 138 CONG. REC. E2473-01, E2473 (daily ed. Aug. 12, 1992) (remarks of Rep. William L. Dickinson of Alabama) (“While free market policies may cause some short-term pain — a shakeout in some industries — they ultimately promote higher living standards and global prosperity.”); *How Change Affects Government*, 137 CONG. REC. E1742-02, E1743 (daily ed. May 14, 1991) (remarks of Rep. Newt Gingrich of Georgia) (commenting that “[a]dvocates of free markets, limited government, low taxes, and deregulation [who] are ideally positioned” to lead government reform of globalization). The latent contradiction between a view that naturalizes market activity yet understands law and policy as critical to fostering it is frequently overlooked.

<sup>9</sup> See *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes J., dissenting). Holmes wrote, “[t]he 14th Amendment does not enact Mr. Herbert Spencer’s Social Statics.” *Id.* As Hovenkamp remarked, Holmes’s *Lochner* dissent: “[S]tanding alone, however, does not

critical legal theory following from Holmes' early insights,<sup>10</sup> such a portrayal should not be revived.

This Article demonstrates that legal rules, and therefore legal decisionmakers, are deeply and directly implicated both in economic globalization and in the distribution of benefits and costs that globalization creates. The premises of the argument are straightforward. First, legal rules have facilitated economic globalization.<sup>11</sup> Second, legal rules have helped to construct the socioeconomic hierarchy that is the field on which economic globalization occurs. The lower rungs of this hierarchy are disproportionately occupied by poor urban minorities.<sup>12</sup> Third, economic globalization may exacerbate this hierarchy.<sup>13</sup> If legal rules helped to produce economic globalization, and legal rules helped to produce a socioeconomic hierarchy, and economic globalization exacerbates this hierarchy, then legal rules, and legal decisionmakers, are partially accountable for this result and the harms it imposes on poor urban minorities.

This Article mounts evidence supporting each of the premises leading to this conclusion. Part I of this Article will show how federal, state, and local law and policy created preexisting conditions of vulnerability among racial minority groups, segregating them disproportionately into impoverished inner cities.<sup>14</sup> Part II describes globalization and the law and policy creating it. Part III discusses the effect of globalization on poor urban minorities given their pre-existing vulnerability.

If logic compels the conclusion that legal rules are partially responsible for creating this problem, justice compels holding lawmakers accountable for resolving it. There is no question of

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make a particularly convincing case that Holmes was not a Social Darwinist. He was a complex man, and it is certainly plausible that he believed in Social Darwinism, but believed even more in judicial restraint." Hovenkamp, *supra* note 6, at 654-63 (discussing Holmes's approach to jurisprudence).

<sup>10</sup> See Brian Bix, *Positively Positivism*, 85 VA. L. REV. 889, 893 (1999) (reviewing ANTHONY J. SEBOK, *LEGAL POSITIVISM IN AMERICAN JURISPRUDENCE* (1998)) (observing that legal realists were "inspired by the moral and legal skepticism of Oliver Wendell Holmes, Jr." and citing Holmes's *Lochner* dissent as one of his most influential writings for realists).

<sup>11</sup> See *infra* Part II.

<sup>12</sup> See *infra* Part I.

<sup>13</sup> See *infra* Part III.

<sup>14</sup> The focus of this Article is on federal law and policy for two reasons: first, because it is simply more accessible and manageable than a state or local survey, although the relationship between federal, state and local law and policy is discussed, and second, because it matches the focus on federal law and policy fostering globalization in Part II.

whether the government should intervene to reduce the problematic impact of globalization on certain populations, because, as Parts I and II show, government has always and already been involved. Consequently, there is only the question of what kind of intervention is most just. Part IV offers some prescriptions for American law and policy in the globalization era.

Before continuing, I note that this Article accepts for present purposes, and despite continuing disagreement, that globalization brings increased economic gains to the United States economy as a whole,<sup>15</sup> and consequently that facilitating globalization may represent a more viable policy alternative in the long-term than resisting it. Even if this is true, however, history and justice require that specific measures are taken to ensure that racial minorities are not disproportionately barred receipt of the dividends that globalization may bring. This Article can therefore be placed in the structuralist tradition, which posits that — in contrast to the highly flexible and fluid economy in the liberal hypothesis — the economy is, in fact, susceptible to inegalitarian rigidities. This Article concludes by advocating law and policy for the reform of such rigidities.

### I. CONDITIONS PREEXISTING GLOBALIZATION

Over the last century, a variety of federal, state, and local laws have entrenched social inequality between whites and minority populations in the United States. Such laws have rendered minorities as a whole worse equipped than whites to benefit from the particular gains brought about by globalization. Part I.A. describes the law and policy of suburbanization — arguably the key factor in the deterioration of inner cities. Part I.B. describes law and policy that more directly created or facilitated racial segregation. Part I.C. briefly lists other areas of law and policy that played a role in the

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<sup>15</sup> Elsewhere, I do take up more intensively the question of the desirability of globalization per se. See Thomas, *supra* note 2. The thesis of this Article builds on the premise that the gains from trade are not evenly distributed, which follows fairly straightforwardly from basic microeconomics. The debate over the extent to which such inequality is just, or the extent to which egalitarian economic outcomes are just, is eternal and intractable, and this Article does not attempt to resolve such questions. The argument is much more limited: that where certain groups are structurally positioned to consistently bear the adverse impact of liberalization, and *where that position is a result of government law and policy*, justice requires the government to take steps to correct this structural disadvantage.

deterioration of the inner cities into separate and unequal communities.

A. *Suburbanization: "Incidental" Racial and Economic Segregation*

"Starting in 1945, one of the Great Migrations of American history took place": this was the migration of the middle classes away from city centers after World War II.<sup>16</sup> From 1950 to 1980, the United States national population grew by fifty percent, but the populations of the northeastern and midwestern city centers declined, by percentages from ten to over fifty percent.<sup>17</sup> While Western and Southern greater metropolitan areas were more likely to grow over this period, they did so in a pattern of "sprawl" replicating the suburban growth in the Northeast and Midwest.<sup>18</sup>

In her exhaustive analysis of the modern city, Saskia Sassen observes that, on one hand, suburbanization signaled progress because it was "associated with the expansion of a middle class and understood as an increase in the quality of life associated with economic development." If the suburbs signaled prosperity, however, "the inner city became an increasingly powerful image . . . to describe central areas where low-income residents, unable to afford a house in the suburbs, were left behind."<sup>19</sup>

Whites were disproportionately large participants in the exodus from the city. During the same era that New York City's overall population declined by eleven percent, for example, its racial composition went from ninety-four percent white in 1940 to forty-nine percent white in 1985.<sup>20</sup> Similar transformations occurred in cities all across the nation.<sup>21</sup> Left behind were racial minorities

<sup>16</sup> RAY SUAREZ, *THE OLD NEIGHBORHOOD: WHAT WE LOST IN THE GREAT SUBURBAN MIGRATION: 1966-1999*, at 2 (1999).

<sup>17</sup> See U.S. Bureau of the Census, Current Population Reports, Series P25-311, P25-802, P25-1045, P25-1126, and PPL-91, available in <<http://www.census.gov/statab/freq/98s0002.txt>> (on file with author) (summarizing census information). For data on city centers, see SUAREZ, *supra* note 16, at 4-7. Suarez noted that New York's population declined by 11%, Chicago's by 17%, Baltimore's by 17%, Philadelphia's by 19%, Washington, D.C.'s by 20%, Cleveland's by 37%, Detroit's by 40%. See *id.*

<sup>18</sup> See William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *FORDHAM L. REV.* 57, 68 (1999).

<sup>19</sup> SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, AND TOKYO* 253 (1991).

<sup>20</sup> See *id.* at 250.

<sup>21</sup> The declines in the percentages of urban populations that were white in Chicago, Philadelphia, Los Angeles, Washington, Baltimore, Houston, San Diego, and San Jose from 1950 to 1990 were respectively 85% to 45%, 81% to 53%, 89% to 52%, 64% to 29%, 76% to 39%, 78% to 52%, 92% to 67% and 96% to 62%. See SUAREZ, *supra* note 16, at 10-11.

comprised of African Americans, many of them relatively recent arrivals into city centers from their own migrations out of the southern United States; and, increasingly over the postwar era, of African, Asian, Caribbean, Latina/o, and Middle Eastern populations resulting from immigration into the United States. Suburbanization thus split the socioeconomic fortunes of middle-class, previously urban whites on the one hand, and poorer, urban minorities on the other. Once created, the rift continued to deepen over the length of the postwar era.

In part, suburbanization resulted from a popular desire to leave the crowded city behind and stake out new territory.<sup>22</sup> Keith Aoki has recounted that this desire was, in turn, driven partially by aesthetic and moral preferences for the town life ideal, and partially by concern about unhealthy living conditions in parts of the city.<sup>23</sup> The move to the suburbs also resonated with the geographical expansionism so closely identified with American culture.<sup>24</sup> Yet to view suburbanization as a cultural phenomenon unaided by law would be deeply erroneous. Throughout the twentieth century, law and policy encouraged and at times literally subsidized suburbanization — and therefore segregation.

This section focuses on federal law and policy that indirectly exacerbated racial segregation by promoting suburbanization.<sup>25</sup> In the twentieth century and particularly in the postwar era, the federal government undertook many initiatives intended to increase home ownership. The home ownership agenda was shaped in part by alarm at population growth in the cities and a perceived need to control the problems that would arise from increased population density. A strong social consensus also endorsed home ownership

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<sup>22</sup> See, e.g., ROBERT FISHMAN, *BOURGEOIS UTOPIAS* (1987).

<sup>23</sup> Aoki, *supra* note 3, at 707-11 (describing rise of pastoral aesthetic that implied that “the city is bad for you”); see also *id.* at 711-18 (describing nineteenth-century tenement conditions that gave rise to description of urban life as “drab, squalid and dreary”).

<sup>24</sup> See, e.g., G. SCOTT THOMAS, *THE UNITED STATES OF SUBURBIA* (1998).

<sup>25</sup> This Article does not look at law explicitly establishing segregation, such as the “Jim Crow” legislation of the South. Rather, the Article focuses on law and policy regulating urban areas primarily in the northern and western United States. This focus is for two reasons. First, the Article looks at the effects of globalization on inner cities, and these effects are primarily in the traditional industrial centers. Second, the Article seeks to show how law and policy can entrench dynamics of socioeconomic subordination and vulnerability among urban minorities. For evidence of such entrenchment, one need not look to the early and explicit permission and enforcement of segregation and discrimination against racial minorities. Rather, one need only look to the laws in place after racial minorities had been explicitly granted equal citizenship.

as inherently desirable and therefore a worthy end of government action. As one commentator remarked, “[h]ome ownership is the American dream.”<sup>26</sup>

Most important of all was the goal of economic growth. Increased home ownership could stimulate national economic growth and development through new construction and increased investment. Economic growth resulting from massive new home ownership would be relatively evenly distributed, and would encourage saving and investment across a broad swath of the population. These seemingly admirable goals, however, had disastrous consequences for inner cities.

First, and least objectionably, federal tax law promoted economic growth through home ownership and therefore incidentally promoted segregation even though there was no explicit preference for non-urban areas. At a second level, federal lending, housing and transportation law and policy did target areas outside cities, and therefore more directly facilitated racial segregation. In both these instances, increased racial segregation was not the express goal of federal law and policy; given the strong connection between race and economic status, however, it was a predictable result of policies that drew the middle classes out of the city.

### 1. Incidental Promotion of Suburbanization

A cornerstone of federal home ownership policy was the federal income tax deduction for interest on home mortgages — in the aggregate, a massive tax subsidy for homeowners.<sup>27</sup> Despite the relatively broad group of beneficiaries of the federal income tax deduction among the middle and upper classes, the deduction has necessarily also reinforced economic divisions between these and the lower classes.<sup>28</sup> The deduction “much more heavily subsidizes

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<sup>26</sup> Julia P. Forrester, *Mortgaging the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing*, 69 TUL. L. REV. 373, 374 & n.1 (1994). For a wonderful discussion of the historical and aesthetic dimensions of this phenomenon, see Aoki, *supra* note 3.

<sup>27</sup> See DANIEL Q. POSIN, FEDERAL INCOME TAXATION OF INDIVIDUALS 457 (3d ed. 1993). Posin earlier introduced the home mortgage interest deduction with this colloquy: “There is a major housing program going to be proposed by the President. . . . [H]ere’s how it will work. It’s going to be massive. It’s going to come to about a total of \$89 billion a year. This is big time.” *Id.* at 457.

<sup>28</sup> Posin continued: “Here’s some other facts about [the federal income tax deduction for home mortgage interest]. Fifty-six percent of this, or \$50 billion, is going to go to the richest 20 percent of Americans. The poorest 20% will get \$15 billion.” *Id.* at 453.



the well-to-do than the poor," since the more valuable the home, the larger the amount deducted.<sup>29</sup> It also multiplies the income differential between those that are able to buy homes, and those that are not and must pay all of their money over into rent. The threshold difference of being able to make a down payment and obtain financing increases over time through the appreciation of real estate assets, and through the income refunded under the tax deduction.<sup>30</sup>

The home mortgage interest deduction not only increased class divisions but also accelerated movement of the middle class away from the city. The increased demand for residences for sale as opposed to residences for rent translated into a demand for construction of new property. New property development occurred overwhelmingly outside the city.<sup>31</sup>

In establishing a subsidy for homeowners, federal tax law did not explicitly seek to concentrate new economic growth outside cities, nor did it explicitly seek to create geographical barriers between whites and racial minorities that would both reflect and entrench segregation along race and class lines. Yet that is precisely what it did.<sup>32</sup> By helping to engender the suburbanization of the middle classes and failing to correct associated racial disparity, federal tax law helped to concentrate minorities in the inner cities and to set the stage for a downward spiral of urban poverty that would play itself out over the next several decades.

## 2. Direct Promotion of Suburbanization

While the tax law discussed above caused suburbanization only incidentally, federal loan and housing regulations directly promoted it. In the area of federal lending law, for example, federal

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<sup>29</sup> *Id.* at 458 ("All of this can be summarized in one succinct piece of tax advice: If you are rich, buy a big house.").

<sup>30</sup> In addition to lacking the income necessary to afford a down payment and mortgage, this initial difference can be exacerbated by information disparities and discrimination in lending. See *infra* Part I.B.

<sup>31</sup> One might argue that suburbanization was a natural outcome of the increased demand for homes, because property in the city tended to be rental. Yet rental property can easily be converted into property to be owned, as was shown by the large-scale conversions of this kind in the 1980s in many cities. In the postwar period, however, much of the new demand was not for converted rentals but rather for new homes.

<sup>32</sup> See Shelby Green, *The Search for a National Land Use Policy: For the Cities' Sake*, 26 *FORDHAM URB. L.J.* 69, 84 (1998) ("Although not their stated intentions, various federal tax measures have operated since the mid-1940s to shape a particular housing pattern.").

appraisal standards applied by the federal Home Owners Loan Corporation “systematically favored suburban neighbourhoods over those in the central city.”<sup>33</sup> Probably the most influential loan regulations, however, were the preferences incorporated by the Federal Housing Administration (FHA) into its mortgage insurance program.<sup>34</sup> The FHA program allowed lenders to “originate home loans free from the risk of loss.”<sup>35</sup> Intended to benefit “first home buyers or purchasers of relatively inexpensive homes,”<sup>36</sup> the FHA program constituted “one of the most important federal programs of the past century.”<sup>37</sup>

Michael Schill and Susan Wachter have argued that the FHA mortgage insurance program also played a role in the deterioration of inner cities.<sup>38</sup> For example, the agency’s “guidelines disfavored ‘crowded neighbourhoods’ and ‘older properties,’ both of which were much more prevalent in cities than in the newly forming suburbs.”<sup>39</sup> This “bias of the [FHA] program toward lending in the suburbs, as compared to the cities, encouraged middle-class households to leave the city and exacerbated the income and fiscal disparities between urban and suburban municipalities.”<sup>40</sup> The

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<sup>33</sup> Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1309 (1995). The Home Owners Loan Corporation was created in 1933. See Home Owners’ Loan Act of 1933, Pub. L. No. 73-43, ch. 64, 48 Stat. 128, 129-32, *repealed by* Housing Amendments of 1953, Pub. L. No. 83-94, ch. 21(a), 67 Stat. 121, 126.

One of the most important contributions of the HOLC was the uniformity it promoted among financial institutions engaged in residential lending. In addition to introducing the fixed-rate, self-amortizing long-term mortgage loan, the HOLC also created uniform appraisal standards through the country. . . . Areas with even relatively small black populations were usually given the lowest rating . . . .”

Schill & Wachter, *supra*, at 1309.

<sup>34</sup> See 12 U.S.C. § 1709(a) (1994).

<sup>35</sup> Schill & Wachter, *supra* note 33, at 1309. More specifically, a “lender who holds an FHA insured loan may assign the loan to FHA if the borrower defaults and may receive payment equal to the principal outstanding on the loan, plus unpaid interest.” Brian Meltzer, *Institutional Financing: Home Loans in the 1980s*, 65 CHI. BAR REC. 84, 85 (1983).

<sup>36</sup> See Meltzer, *supra* note 35, at 85.

<sup>37</sup> Schill & Wachter, *supra* note 33, at 1309.

<sup>38</sup> See *id.*

<sup>39</sup> *Id.*; see also Kenneth T. Jackson, *Race, Ethnicity and Real Estate Appraisal: The Home Owners Loan Corporation and the Federal Housing Administration*, 6 J. URB. HIST. 419, 435 (1980) (“[P]rospective buyers could avoid many of these [difficulties] . . . by locating in peripheral sections.”).

<sup>40</sup> Schill & Wachter, *supra* note 33, at 1311.

FHA program exacerbated segregation along economic and racial lines in housing markets.<sup>41</sup>

In addition to law and policy relating to home ownership, the federal government encouraged suburbanization through its massive transportation project of building a national highway system, deemed by some "the nation's most extensive and expensive continuing public works program."<sup>42</sup> In 1956, pursuant to a committee appointed by President Eisenhower (and chaired by a General Motors executive), Congress mandated the construction of an interstate highway system stretching more than 40,000 miles.<sup>43</sup> The interstate highway system continues to rely on a web of federal, state and local governmental support.<sup>44</sup> According to one estimate, the highway system is only sixty percent "self-financed" through tolls and gas taxes, with the additional forty percent provided through government subsidy.<sup>45</sup>

Like tax and lending policy, federal transportation policy supporting highway subsidization aspired to worthy goals. "Governmental expenditure on . . . highways had the well-intended objective of connecting the country and facilitating commerce through a system of national highways. More roads meant more jobs in construction and maintenance, more business along highways, more personal convenience, and an easier delivery of freight."<sup>46</sup>

And yet, the highway system created universally recognized costs for cities.<sup>47</sup> Highways encouraged residential exodus to the suburbs by making it easier for city workers to commute into cities.<sup>48</sup> Highways also reduced the "relative advantage of a central city location"

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<sup>41</sup> See Roberta Achtenberg, *Shaping American Communities: Segregation, Housing and the Urban Poor*, 143 U. PA. L. REV. 1191, 1193 (1995). Achtenberg was then Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development.

<sup>42</sup> Ronald C. Peterson & Robert M. Kennan, Jr., *The Federal-Aid Highway Program*, 2 ENVTL. L. REP. 50001 (1972).

<sup>43</sup> See Michael E. Lewyn, *The Urban Crisis: Made in Washington*, 4 J.L. & POL'Y 513, 540 (1996). The involvement of General Motors was not seen as a conflict of interest, given the conventional wisdom at the time that "What is good for General Motors is good for the country." See Linda A. Mabry, *Multinational Corporations and U.S. Technology Policy: Rethinking the Concept of Corporate Nationality*, 87 GEO. L.J. 563, 596 & n.126 (1999) (discussing origins of this phrase).

<sup>44</sup> See Buzbee, *supra* note 18, at 68; Lewyn, *supra* note 43, at 542.

<sup>45</sup> See Lewyn, *supra* note 43, at 540.

<sup>46</sup> Green, *supra* note 32, at 83.

<sup>47</sup> See, e.g., Buzbee, *supra* note 18, at 6869; Green, *supra* note 32, at 84.

<sup>48</sup> See Lewyn, *supra* note 43, at 542.

and contributed to the relocation of “wholesale trade, trucking, and warehousing outside the city.”<sup>49</sup>

Federal tax, loan, housing, and transportation regulations entrenched geographic and economic mechanics of racial segregation by encouraging middle-class families and white-collar industries to move into the suburbs. In effect, suburbanization deepened racial segregation. None of these policies were explicitly designed to reinforce racial segregation. Yet the “housing and finance subsidies which favored the suburban, white middle class tilted the playing field against the central cities and older areas of the nation.”<sup>50</sup> In doing so, they helped to skew the capacity of poor urban minorities not just to thrive in then-existing conditions, but also to be able to adjust positively to change, including changes wrought by economic globalization.

### B. *Intentional Racial Segregation*

By realigning economic classes along geographical divides, federal tax, housing and transportation policy also reinforced racial segregation. The federal government was also implicated by varying degrees in explicit racial segregation. First, the federal government in certain cases allowed nonstate actors and state and local governments to pursue racial segregation in housing and lending. Second, there was some explicit racialism in the federal housing policies that helped shaped today’s metropolitan areas.

#### 1. Federal Noninterference in Racial Segregation by Local Governments

*Racial Segregation in Public Housing.* Federal housing regulations encouraged the concentration of public housing in the inner city. Public housing regulations allowed local governments to keep federally funded housing away from white, middle-class areas and to concentrate it in already poor and predominantly minority areas. Given that disproportionately large numbers of those eligible for public housing were racial minorities, this decision cemented seg-

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<sup>49</sup> SASSEN, *supra* note 19, at 202.

<sup>50</sup> Christian C. Day, *Resisting Serfdom: Making the Market Work in a Great Republic*, 25 IND. L. REV. 799, 814 (1991).

regation for them and reinforced it for the larger communities out of which and into which they were directed by local governments.<sup>51</sup>

Several components of federal housing law and policy combined to allow segregation by local governments. First, the Housing Act of 1937 established that “[i]t is the policy of the United States to . . . vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs.”<sup>52</sup> Under this “local control” policy, local government had virtually free rein to relegate “undesirable” public housing residents to already “undesirable” areas.<sup>53</sup> In many cases this federal lenience allowed local decisionmakers to create city slums. The federal government was therefore complicit with racial segregation by local housing agencies.<sup>54</sup> In New York, for example, “power broker” Robert Moses energetically pursued segregation in public housing.<sup>55</sup> In Chicago, the local housing authority’s persistent racial discrimination caused Dr. Martin Luther King, Jr. and other civil rights activists to lead “open housing protests” in the 1960s.<sup>56</sup>

Second, the Housing Act contained an “equivalent elimination requirement”<sup>57</sup> that required that one unit of “substandard” housing be eliminated for every unit of public housing built. Because most suburbs had little substandard housing, this requirement rendered them ineligible for public housing construction.<sup>58</sup> Finally, segregation became acute in 1949 with more stringent income limitations in public housing.<sup>59</sup> (These income restrictions

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<sup>51</sup> See generally Schill & Wachter, *supra* note 33.

<sup>52</sup> Housing Act of 1937, 42 U.S.C. § 1437 (1994). The Housing Act codified a 1935 federal court case requiring that federally funded housing be built in partnership with local government.

<sup>53</sup> See *United States v. Certain Lands in City of Louisville, Jefferson County, Ky.*, 78 F.2d 684, 686 (6th Cir. 1935) (holding that federal power of eminent domain cannot justify construction of low-income housing because such activity does not constitute sufficient “public use” of land).

<sup>54</sup> See Florence Wagman Roisman, *Intentional Racial Discrimination and Segregation by the Federal Government as a Principal Cause of Concentrated Poverty*, 143 U. PA. L. REV. 1351, 1358 & n.23 (1995).

<sup>55</sup> See ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974).

<sup>56</sup> See Janet K. Levit, *Rewriting Beginnings: The Lessons of Gautreaux*, 28 J. MARSHALL L. REV. 57, 63 (1994).

<sup>57</sup> Housing Act of 1937, § 10(a), 50 Stat. 891-92 (1937) (current version at 42 U.S.C. § 1437 (1994)).

<sup>58</sup> Schill & Wachter, *supra* note 33, at 1292.

<sup>59</sup> *Id.* at 1294.

continue in present day regulations).<sup>60</sup> The result of all of these components of federal housing law and policy was a deeply entrenched dynamic of segregation of public housing.

Thus, by 1962, "eighty percent of federally supported developments were completely segregated."<sup>61</sup> In the 1960s, reformers attempted to put an end to the federal government's reinforcement of segregation through its housing and home-ownership policies. Litigation arising from the Chicago open housing protests found HUD's complicity with local discrimination unconstitutional.<sup>62</sup> The Fair Housing Act of 1968 required the Department of Housing and Urban Development (HUD) to take into account the segregative effects of locating housing.<sup>63</sup> HUD regulations now provide that a project should generally not further racial concentration.<sup>64</sup> Although some courts have attempted to enforce these reforms strictly,<sup>65</sup> most courts deferred to HUD site selection.<sup>66</sup> The result of such deference, according to some, is that HUD site selection continues to exacerbate race and class divisions.<sup>67</sup> Even assuming

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<sup>60</sup> *Id.* at 1314-16.

<sup>61</sup> See David W. Price, Note, *Causation of Public Housing Segregation: HUD Authorization of Applicant Choice in Tenant Selection and Assignment Plans*, 10 B.C. THIRD WORLD L.J. 121, 122 (1990).

<sup>62</sup> See generally Levit; *supra* note 56; Alexander Polikoff, *Gautreaux And Institutional Litigation*, 64 CHI-KENT L. REV. 451 (1988).

<sup>63</sup> This interpretation has been given to section 3608 of the Fair Housing Act, which requires HUD to "administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title." Fair Housing Act of 1968, 42 U.S.C. § 3608 (e)(5) (1994).

<sup>64</sup> The Code of Federal Regulations provides that a HUD project must not be located in an area of:

- (1) minority concentration unless (i) sufficient, comparable opportunities exists for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (ii) the project is necessary to meet overriding housing needs which cannot otherwise be feasibly met in that housing market area; or (2) a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area.

24 C.F.R. § 891.125(b) (1999).

<sup>65</sup> For example, *Shannon v. HUD*, held that HUD had violated section 3608 when it decided to support a public housing project but did not consider that "the location of this type of project on the site chosen will have the effect of increasing the already high concentration of low income black residents." 436 F.2d 809, 812 (3d Cir. 1970).

<sup>66</sup> See, e.g., *Faymor Dev. Co. v. King*, 446 U.S. 905 (1980).

<sup>67</sup> See Sam Brownback, *Resolving HUD's Existing Problems Should Take Precedence over Implementing New Policies*, 16 ST. LOUIS U. PUB. L. REV. 235, 238 (1997) ("[HUD housing] projects invariably are difficult to manage and maintain, tend to segregate families by race, education and income, and isolate the poor in some of the worst neighborhoods in any

HUD site selection since 1968 has been ideal, the deeper problem is that the patterns of racial and economic segregation along city-suburb lines had already been drawn by the time the HUD stopped purposely reinforcing them.

*Discrimination Through Exclusionary Zoning.* According to Richard Ford, “[e]xclusionary zoning is a generic term for zoning restrictions that effectively exclude a particular class of persons from a locality by restricting the land uses those persons are likely to require.”<sup>68</sup> The Supreme Court has struck down both explicitly racial exclusionary zoning and state enforcement of racially restrictive covenants as violative of the Fourteenth Amendment of the federal Constitution.<sup>69</sup> However, the Court has upheld local governments’ right to exclusionary zoning mechanisms with racially discriminatory effects, such as prohibitions of multifamily housing that exclude lower-income and public housing.<sup>70</sup> Richard Schwemm has observed that “[t]he Court’s deferential attitude towards municipal zoning decisions that raise only economic issues has continued to the present day.”<sup>71</sup>

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city.”); Price, *supra* note 61, at 122-23 (charging that “little has changed” in public housing either in the level of segregation in public housing or in HUD’s willingness to combat it, and quoting a HUD official’s admission that HUD was “deeply involved in the creation of the ghetto system, and it has never committed itself to any remedial action”).

<sup>68</sup> Ford, *supra* note 3, at 1870.

<sup>69</sup> Section 1 of the Fourteenth Amendment provides that “no State shall . . . deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The Supreme Court struck down explicitly racial exclusionary zoning in *Buchanan v. Warley*. See 245 U.S. 60, 74-82 (1917) (holding that Louisville, Kentucky municipal ordinance restricting property sales on basis of race within designated areas violated Fourteenth Amendment’s protection of “property from invasion by states without due process of law”). The Court held that state enforcement of racially restrictive property covenants violated the Fourteenth Amendment in *Shelley v. Kraemer*. See 334 U.S. 1 (1948).

<sup>70</sup> In *Euclid v. Ambler Realty Co.*, the Supreme Court upheld a zoning ordinance that prohibited multi-family housing. See 272 U.S. 365 (1926). In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, the Court held that a zoning ordinance prohibiting multifamily housing was not unconstitutional [under the Fourteenth Amendment] solely because it results in racially disproportionate impact” and “[p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” 429 U.S. 252, 264-65 (1977). Richard Ford has argued that the intuitive validity of such zoning mechanisms stems from reifications of local government space that allow local governments to flout responsibility for their part in ensuring racial justice. See generally Ford, *supra* note 3.

<sup>71</sup> ROBERT G. SCHWEMM, HOUSING DISCRIMINATION LAW 17 n.17 (1983) (citing *Agins v. City of Tiberon*, 447 U.S. 255 (1980)).

## 2. Federal Noninterference with Racial Segregation by Nonstate Actors

A considerable body of legislation, regulation and case law has developed to combat discrimination in lending and housing, both of which critically affect the concentration of racial minority groups in the inner city. Despite this, however, discrimination has persisted.<sup>72</sup> Some commentators believe this persistence is at least partially attributable to wrong-headed legal approaches to discrimination.<sup>73</sup>

*Failure to Correct Discrimination in Home Sales.* Racial discrimination in home sales exacerbated the dynamics of racial segregation described in Part I.A. The racial segregation that arose incidentally as a result of economic disparities between whites and non-whites was secured and reinforced by intentional racial discrimination. Intentional racial discrimination further concentrated racial minorities in inner cities by impeding those proportionately few minorities that wanted and were financially able to leave the inner city from doing so. Federal law and policy is deeply implicated in the question of racial discrimination in home sales.

Congress and the courts have become gradually more willing to prohibit racial discrimination in real estate transactions. Courts have applied the Thirteenth Amendment<sup>74</sup> of the federal Constitution to prohibit racially driven refusals to sell or rent to or negotiate with black home seekers;<sup>75</sup> discriminatory terms, conditions or services in property sales or services;<sup>76</sup> and "racial steering," or "di-

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<sup>72</sup> See *infra* notes 85-95.

<sup>73</sup> See Stephen M. Dane, *Eliminating the Labyrinth: A Proposal to Simplify Federal Mortgage Lending Discrimination Laws*, 26 MICH. L. REV. 527, 532 (1993) (arguing that "instead of addressing the mortgage-lending discrimination problem directly and comprehensively, Congress has taken a piecemeal and incomplete approach that generally has failed to bring the mortgage-lending industry into equal access compliance").

<sup>74</sup> Section 1 of the Thirteenth Amendment provides that: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII, § 1. Congress enacted the Civil Rights Act of 1866, to reinforce the Thirteenth Amendment. See 42 U.S.C. § 1982 (1994) (providing that "[a]ll citizens of the United States shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property").

<sup>75</sup> See *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 409, 413 (1968); *Newbern v. Lake Lorelei, Inc.*, 308 F. Supp. 407 (S.D. Ohio 1968).

<sup>76</sup> See *Tillman v. Wheaton-Haven Recreation Ass'n, Inc.*, 410 U.S. 431 (1973); *Sullivan*, 396 U.S. at 229; *Clark v. Universal Builders, Inc.*, 501 F.2d 324 (7th Cir. 1974), *cert. denied*, 419 U.S. 1070 (1974).



recting prospective home buyers interested in equivalent properties to different areas according to their race.”<sup>77</sup>

Established a century later, the Fair Housing Act of 1968 (“1968 Act”) strengthens the prohibition against racial discrimination in housing.<sup>78</sup> Courts applied the 1968 Act to outlaw racially motivated refusals to sell, rent or negotiate regarding property,<sup>79</sup> or otherwise make property unavailable.<sup>80</sup> Courts have generally agreed that a prima facie case for violation can be made by showing discriminatory effect only, without any showing of discriminatory intent.<sup>81</sup>

Despite the range of anti-discrimination law described above, in 1995 a federal official conceded federal fair-housing law to be “weak and inadequate.” Another lamented that the federal government had been “deeply involved in the creation of the ghetto system, and it has never committed itself to any remedial action”.<sup>82</sup>

One difficulty is that the coverage of the law is incomplete. The Act exempts from its antidiscrimination provisions “single-family houses sold or rented by the owner without the use of a real estate agent or discriminatory advertising”; as well as “units in dwellings where the owner lives that are occupied by no more than four families.”<sup>83</sup> Moreover, enforcement of the fair-housing laws has proved to be very difficult because it depends almost entirely on individual lawsuits. “Although the 1968 Fair Housing act outlawed discrimination on the basis of race in housing-market transactions,

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<sup>77</sup> See *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91, 94 (1979).

<sup>78</sup> Title VIII of the Civil Rights Act of 1968, is the most important provision, “prohibiting the refusal to sell or rent, or negotiate therefore, on the basis of race, color, religion, sex or national origin.” 42 U.S.C. 3604(a) (1994).

<sup>79</sup> This prohibition affects explicit refusals. See *United States v. Hughes Mem'l Home*, 396 F. Supp. 544, 547-48 (W.D. Va. 1975); *United States v. Real Estate Dev. Corp.*, 347 F. Supp. 776, 779-80 (N.D. Miss. 1972). The prohibition also affects refusals through avoidance and delay. See *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 207-08 (1972); *United States v. Pelzer Realty Co., Inc.*, 484 F.2d 438, 442, 446 (5th Cir. 1973), *cert. denied*, 416 U.S. 936 (1974) (prohibiting “grudging” sales techniques “not consistent with common sense and ordinary business practices”).

<sup>80</sup> *United States v. Youritan Constr. Co.*, 370 F. Supp. 643 (N.D. Cal. 1973), *aff'd as modified*, 509 F.2d 623 (9th Cir. 1975). This includes a ban on “racial steering.” See *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975); *Johnson v. Jerry Pals Real Estate*, 485 F. Supp. 399 (E.D. Va. 1974); *United States v. Henshaw Bros., Inc.*, 401 F. Supp. 399 (E.D. Va. 1974).

<sup>81</sup> SCHWEMM, *supra* note 71, at 58-62, 404 (1983).

<sup>82</sup> Price, *supra* note 61, at 122-23.

<sup>83</sup> SCHWEMM, *supra* note 71, at 48 (citing 42 U.S.C. §§ 3603(b)(1), 3603(b)(2), 3607 (1994)). The Act applies to dwellings owned or operated by the Federal Government; provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government, and; insured, guaranteed, or otherwise secured by the credit of the Federal Government. See 42 U.S.C. § 3603(a)(1) (1994).

it placed most of the burden for recognizing and combating illegal discrimination on the victims themselves."<sup>84</sup>

*Failure to Correct Discrimination in Lending.* Controversy continues to surround the question whether the federal government prevents discriminatory and racially segregative lending by private institutions. Discrimination in lending solidifies geographical segregation along racial lines and concentrates poverty in the inner city by hindering those who are otherwise qualified to purchase new homes or otherwise invest in housing from doing so. Such discrimination both reduces minority influx into new homes in the suburbs and prevents redevelopment of existing housing stock in cities.

Several federal statutes prohibit "redlining," the practice by which lenders deem borrowers from certain neighborhoods unfit for normal loans on the basis of the racial composition of those neighborhoods.<sup>85</sup> The Community Reinvestment Act of 1977 ("CRA")<sup>86</sup> moved beyond merely prohibiting discrimination and affirmatively required financial institutions to ensure that they are providing adequate services to minority neighborhoods.<sup>87</sup> The enforcement mechanism for the CRA was to be the power of federal agencies regulating financial institutions to disapprove proposals by those institutions for bank charters, mergers, deposit insurance and investment in other financial institutions.<sup>88</sup>

Unfortunately, enforcement of both the antidiscrimination and the "affirmative action" federal lending regulations has been lim-

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<sup>84</sup> Achtenberg, *supra* note 41, at 1194.

<sup>85</sup> SCHWEMM, *supra* note 71, at 187. Section 3605 of Title VIII of the Civil Rights Act of 1968 prohibits discrimination by a financial institution on the basis of race, color, religion, sex or national origin. *See* 42 U.S.C. § 3605 (1994); *see also* Harper v. Union Savs. Ass'n, 429 F. Supp. 1254, 1257 (N.D. Ohio 1977) (prohibiting discrimination in form of mortgage foreclosure policies that are stricter for minority than white homeowners); Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 493 (S.D. Ohio 1976) (prohibiting racial discrimination in financial assistance for purchasing, constructing or maintaining dwelling, or in fixing terms or conditions of financial assistance). The Equal Credit Opportunity Act and the Home Mortgage Disclosure Act of 1975, reinforce this prohibition. *See generally* Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801-2811 (1994); Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691e (1994).

<sup>86</sup> 12 U.S.C. §§ 2901-2905 (1994).

<sup>87</sup> The CRA requires "each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions." 12 U.S.C. § 2901(b) (1994).

<sup>88</sup> Schill & Wachter, *supra* note 33, at 1319, (citing 12 U.S.C. §§ 2902-2903).

ited.<sup>89</sup> Enforcement of the antidiscrimination statutes proved difficult because discrimination in lending was hard to prove empirically.<sup>90</sup> Given that racial minorities were also often poor and unfamiliar to lending officers, it was difficult to show that racial disparities in lending did not reflect prudent lending policy based on race-neutral criteria. Inadequate enforcement for many years plagued the CRA as well. CRA enforcement consisted of reporting requirements that were criticized by industry as burdensome and by activists as ineffective.<sup>91</sup>

In the early 1990s, however, two influential empirical studies found that race did significantly affect likelihood of obtaining home ownership financial assistance, even controlling for disparities in non-racial criteria variables that would create racial disparities in lending.<sup>92</sup> It cannot be said that the federal government turned a blind eye to the problem. Yet, the 1990s reports showed that race (even controlling for associated factors that might affect lending outcomes, such as income level) still significantly affects lending policy.<sup>93</sup> Anthony Taibi has argued that federal lending law has failed because it has overlooked existing structural inequalities and therefore perpetuates economic and racial segregation.<sup>94</sup> Taibi concluded that neither the “equality paradigm” nor the “affirmative action paradigm” in current federal law can ad-

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<sup>89</sup> See A. Brooke Overby, *The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431, 1448-49 (1995).

<sup>90</sup> See *id.*

<sup>91</sup> See generally *id.* at 1458-1569.

<sup>92</sup> See Glenn B. Canner, *Home Mortgage Disclosure Act: Expanded Data on Residential Lending*, 77 FED. RES. BULL. 859 (1991) (commenting that blacks and Latinas/os were rejected 33.9% and 21.4% for home buying loans, as opposed to 14.4% for whites); see also Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data* (Federal Reserve Bank of Boston Working Paper No. 92-7, 1992) (noting that blacks and Hispanics are 56% more likely than whites to be rejected).

<sup>93</sup> Following these studies, the federal government made several attempts to strengthen the CRA substantively and enforce it more vigorously. See Schill & Wachter, *supra* note 33, at 1320. In 1995 CRA regulations were approved that marked a turn away from “the efforts/process-based enforcement standard that had been in effect since 1978,” and a turn towards “actual results, including loans, investments, and services to an institution’s ‘assessment area.’” Overby, *supra* note 89, at 1469. The objections surrounding the CRA, however, have not subsided. Many argue that apparent redlining includes lending decisions with discriminatory effect but based on “rational” factors, and that the CRA tries to solve “the problems of inadequate housing, urban decay, and violence that have become issues of national importance” by “compel[ling] suboptimal lending patterns” in a way which makes it “fundamentally flawed . . . anachronistic and ultimately self-defeating.” *Id.* at 1435-36.

<sup>94</sup> See Anthony Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463, 1467-71 (1994).

dress the “structural disinvestment” that plagues inner cities, because neither paradigm recognizes the systematic market failure that drives such disinvestment. Taibi’s argument mirrors a theme of this Article: without concerted correction, structural inequality persists in liberalized market conditions.<sup>95</sup>

### 3. Promotion of Segregation on the Basis of Race

In addition to acting as an unintentional engine of racial segregation, federal law and policy at times facilitated intentional racial segregation by local authorities. At other times federal authorities have actually promoted racial exclusion.

The term racial redlining discussed above with respect to non-state actors, at least according to some commentators, originated with federal governmental practices.<sup>96</sup> Early versions of the Federal Housing Administration’s underwriting manual, for example, “warned against making loans in areas with ‘inharmonious racial groups’”<sup>97</sup> in order to prevent “instability and a decline in values.”<sup>98</sup> Until 1950, the Federal Housing Administration and Veterans Administration mortgage insurance programs not only permitted, but actually recommended racially restrictive property covenants.<sup>99</sup> Thus, early “racially discriminatory underwriting practices engaged in by the FHA promoted racial segregation in American cities and contributed to the creation of urban ghettos.”<sup>100</sup>

In 1962 President Kennedy directed the federal government to prevent discrimination in the use, rental or sale of all residential

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<sup>95</sup> See *infra* Part IV. This argument is an oft recurring, if seldom-heeded, theme of critical theory. See generally Chantal Thomas, *Causes of Inequality in the International Economic Order: Critical Race Theory and Postcolonial Development*, 9 *TRANSNAT’L L. & CONTEMP. PROBS.* 1 (1999) (observing postcolonial development theory and American critical race theory both sought to show how dominant legal systems perpetuate structural inequality between dominant and subordinate groups in system).

<sup>96</sup> See Schill & Wachter, *supra* note 33, at 1310 n.101 (“Redlining obtains its name from the practice of FHA underwriters’ circling in red areas of the city that were bad credit risks.”) (quoting NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 101 (1969)).

<sup>97</sup> *Id.* at 1310 (quoting Gary Orfield, *Federal Policy, Local Power and Metropolitan Segregation*, 89 *POL. SCI. Q.* 777, 786 (1975) (quoting FHA Underwriting Manual)).

<sup>98</sup> DENNIS R. JUDD, *THE POLITICS OF AMERICAN CITIES: PRIVATE POWER AND PUBLIC POLICY* 281 (1979) (quoting FHA Underwriting Manual).

<sup>99</sup> See Schill & Wachter, *supra* note 33, at 1310; see also MARK I. GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933-1965*, at 217 (1975) (observing that “FHA virtually made [racially restrictive covenants] mandatory”); U.S. DEP’T OF HOUS. & URB. DEV., *EQUAL OPPORTUNITY IN HOUSING* ¶ 2301, at 2320 (1973).

<sup>100</sup> Schill & Wachter, *supra* note 33, at 1311.

property that it financed, operated or owned,<sup>101</sup> and his order was later reinforced by the Civil Rights Act of 1964.<sup>102</sup> These remedies, however, were prospective and not retrospective. That is, they prohibited the creation of racially segregated public housing facilities but did nothing to redress the segregation that already existed. Some have even argued that “[t]he federal government intentionally established the public housing program on a de jure racially segregated basis.”<sup>103</sup>

In sum, a number of regulatory structures in the postwar period directly or indirectly fuelled the exodus of the middle classes from the suburbs. Because the middle classes were predominantly white, this created not only economic but racial segregation between the cities and suburbs. The racial aspects of suburbanization were not entirely secondary. Early federal housing and lending policies purposely entrenched this racial dynamic. Also damaging was an absence of effective federal policies designed to correct discrimination not only by private actors but also by state and local governments. Although courts attempted to eliminate overt racial restrictions, government did very little to break the link between economic and racial status, so that despite antidiscrimination law racial segregation remained deeply entrenched.<sup>104</sup>

The above discussions shed light on a grimly comprehensive set of interlocking dynamics that tie together racial, economic and geographical segregation. Historical conditions produced socio-economic inequality between whites and racial minorities. Federal law and policy intended to spur economic growth exacerbated these inequalities by placing white middle-class families in suburbs and poor minority families in the inner city. In addition to acting as an unintentional engine of racial segregation, federal law and policy at times facilitated intentional racial segregation by local

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<sup>101</sup> See Exec. Order No. 11063, 27 Fed. Reg. 11,527 (1962) (amended by Exec. Order No. 12,259, 46 Fed. Reg. 1253 (1980)).

<sup>102</sup> 42 U.S.C. § 2000d (1994). The most famous fair-housing litigation arising from the 1964 Civil Rights Act was *Gautreaux v. Romney*, which held that racially segregated public housing maintained by the Chicago Housing Authority violated the Act. 448 F.2d 731 (7th Cir. 1971).

<sup>103</sup> See Roisman, *supra* note 54, at 1357 (citing *Gautreaux v. Romney*, 448 F.2d 731, 739 (7th Cir. 1971) (finding that HUD intentionally created racial segregation in Chicago public housing); see also *Young v. Pierce*, 628 F. Supp. 1037, 1043-51 (E.D. Tex. 1985) (describing activities of HUD related to creation and entrenchment of racial segregation).

<sup>104</sup> DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993).

state and nonstate actors; at other times federal authorities explicitly promoted racial exclusion. Against these formidable structural dynamics, federal antidiscrimination law has proved relatively ineffectual in undoing segregation.

### C. *Deterioration of City Infrastructure*

The hierarchy of race, income and geography created in part by the law and policy described in Parts I.A. and I.B. renders urban poor minorities disproportionately vulnerable to adverse effects of globalization. This section indicates additional contours of this hierarchy and the vulnerability it creates.

With the middle class leaving in record proportions from the cities during the postwar period, urban areas deteriorated. While the causes were complex and manifold, legal rules played a role in facilitating the progression of urban malaise. First, federal jurisprudence allowed state and local governments to maintain disparities in spending on infrastructure and public services, including education and police protection. Second, disparities in lending inhibited business and residential development.

#### 1. The Deterioration of Urban Infrastructure and Public Services

Suburbanization led to severe deterioration of the housing stock, infrastructure, and educational systems and economies of inner cities. Because of the jurisdictional separation of cities from suburbs, the tax base that could sustain basic infrastructure and public services crumbled in many cities as the middle classes left for the suburbs.<sup>105</sup> This has often been seen as a natural, if unfortunate, result of such jurisdictional divisions. That perception, however, uncritically accepts the legal separation of the city and suburban tax bases. Richard Ford has shown how courts have reinforced the power of local governments to define their tax bases and revenue distribution as they see fit, even though local governments are mere subdivisions of states and have no special constitutional right to self-determination. In this way, courts have reinforced territorial demarcations and dismissed their effect of entrenching racial segregation.<sup>106</sup>

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<sup>105</sup> See *infra* for a discussion of local government law and its role in creating this effect.

<sup>106</sup> Ford, *supra* note 3.

The jurisdictional and distributional divisions entrench inequality in basic public goods provided to urban as opposed to suburban populations. Inner cities often suffer from disproportionately low state funds to maintain infrastructure in comparison to suburbs.<sup>107</sup> With respect to other public services, perhaps the most prominent example is education. *Milliken v. Bradley* held, for example, that courts could not order desegregation school busing between Detroit schools and Detroit's predominantly white suburban school districts.<sup>108</sup> Further entrenching this disparate relationship between suburban and city schools, *San Antonio Independent School District v. Rodriguez* held that a school-financing system could maintain large disparities in tax-burden/expenditure ratios among districts without violating the Equal Protection Clause.<sup>109</sup> These decisions have played a role in what one commentator has called the federal government's "quiet abandonment" of the goal of desegregating the public schools.<sup>110</sup>

These dynamics have allowed the gap between suburban and inner-city schools to grow over the years, to the point where the deplorable conditions of many urban school systems are well-known. "[S]chools in impoverished areas tend to have much lower test scores, higher dropout rates, fewer students in demanding classes, less well-prepared teachers, and a low percentage of students who will eventually finish college."<sup>111</sup> Public schools attended predominantly by children who are racial minorities are sixteen times more likely to be in areas of concentrated poverty than those schools that are not predominantly attended by racial minorities.

Education systems in suburbs also often benefit disproportionately from state spending. In New York, for example, state spending on education outside New York City is higher per child than within the city. At the same time that little has been done to ad-

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<sup>107</sup> See KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 131-32 (1985).

<sup>108</sup> See 418 U.S. 717 (1974); see also Ford, *supra* note 3, at 1875.

<sup>109</sup> See 411 U.S. 1 (1973); see also Ford, *supra* note 3, at 1876.

<sup>110</sup> See Larry Tye, *U.S. Sounds Retreat in School Integration: America's Schools in New Segregation*, BOSTON GLOBE, Jan. 5, 1992, available in 1992 WL 4158916.

<sup>111</sup> Dash T. Douglas, *A House Divided: The Social and Economic Underdevelopment of America's Inner Cities*, 10 U. FLA. J.L. & PUB. POL'Y 369, 384 (1999) (citing MILTON S. EISENHOWER FOUNDATION, THE MILLENNIUM BREACH 10 (1998)).

dress these inequalities, courts have rolled back affirmative action at the postsecondary level.<sup>112</sup>

## 2. Deterioration of Business and Housing Development

Business faces a number of obstacles if it wants to put down roots and thrive in the inner city. First, capital formation in depressed urban communities remains disproportionately low. As Part I.B. indicated, capital lending to minorities is lower than for whites. While some of this disparity may be explainable on race-neutral grounds, some of it is not.<sup>113</sup> Second, the human capital so crucial both to entrepreneurship and to a productive work force is eroded in the inner city by poverty and inferior education. Third, the deterioration of infrastructure and public services make business prospects in the inner city even more unappealing.

The early bias of federal home ownership programs led to an "unavailability of mortgage capital for purposes of home improvement or home purchase in inner-city neighbourhoods [that] may have contributed to the disinvestment in housing and decline in property values experienced by most American cities in the second half of the twentieth century."<sup>114</sup> Even now, homeowner lending to minorities is lower than to similarly situated whites, despite the federal prohibition of racially segregative lending.<sup>115</sup> Redlining has

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<sup>112</sup> For a discussion of inequitable school funding in New York City, see COMMUNITY SERVICE SOCIETY OF NEW YORK, *SEPARATE, UNEQUAL, AND INADEQUATE: EDUCATIONAL OPPORTUNITIES & OUTCOMES IN NEW YORK CITY PUBLIC SCHOOLS* (1995). For a discussion of affirmative action, see Kimberlé Crenshaw, *Playing Race Cards: Constructing a Pro-Active Defense of Affirmative Action*, 16 NAT'L BLACK L.J. 196, 196-97 (1999-2000). While the Supreme Court allowed race to be taken into consideration as one of many factors in determining admissions in post-secondary institutions, states such as California and Texas have disallowed any such considerations in admissions to their state university systems. Texas is a partial exception to this description in the sense that Texas has pursued relatively aggressive redistributive educational spending policies, has actively and explicitly focused on improving minority performance on standardized tests, and has established a policy under which state universities now admit all Texas high school graduates in the top 10% of their classes.

<sup>113</sup> See Schill & Wachter, *supra* note 33, at 1311.

<sup>114</sup> *Id.*

<sup>115</sup> Section 3605 of Title VIII of the Civil Rights Act of 1968 prohibits a financial institution from denying financial assistance for purchasing, constructing or maintaining a dwelling, or in fixing the terms or conditions of the financial assistance, because of race, color, religion, sex or national origin. See 42 U.S.C. § 3605 (1994). Section 3605 also prohibits redlining, see *Laufman v. Oakley Building & Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976), which is "the practice of identifying certain neighbourhoods as unfit for normal housing loans on the basis of their racial makeup or some other prohibited ground." SCHWEMM, *supra* note 71, at 187. In addition, section 3605 prohibits discrimination in the form of mortgage foreclosure policies more aggressive for minority than white homeowners. See



made it difficult to obtain loans for renovation or redevelopment. Privately owned housing stock further deteriorated as inner-city landlords became increasingly absentee, and expectations of declining property values led to declining maintenance. As for public housing, “[i]nefficient management and systematic under-maintenance . . . contributed to [its] ghettoization.”<sup>116</sup> All of these dynamics have caused privately owned housing stock in many urban minority neighborhoods to deteriorate over the postwar era.<sup>117</sup>

*Other Causes of Inner-City Economic Depression.* At the same time that the physical infrastructure and capital stock of the inner city deteriorated, suburbanization moved management-level corporate jobs out of the city. Proximity to skilled workers, better infrastructure, and even tax breaks<sup>118</sup> encouraged this trend; as manufacturing relocated,<sup>119</sup> there was little to impede it. In New York, for example, the “massive decline in manufacturing” was accompanied by a “massive loss of headquarters and hence of office jobs.”<sup>120</sup> Thus, cities have become increasingly irrelevant to traditional industrial production, as the manufacturing sector has left cities and the management has moved out to the suburbs.

With low levels of capitalization and deteriorating infrastructure and public services, the economic stimulus to the inner city that might have come from new business or home development replacing the proprietors and homeowners that left did not occur. The rest of the story is not hard to imagine. Decreased employment opportunities further weakened the socioeconomic system left behind. Not surprisingly, the concentration of poverty was not attractive to entrepreneurs. Crime resulting from this concentration further hastened the departure of business and relatively mobile families out of the cities. These factors all conspired to create what Douglas and Massey famously called “American Apartheid.”<sup>121</sup>

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Harper v. Union Savs. Ass'n, 429 F. Supp. 1254, 1257-58 (N.D. Ohio 1977) (construing section 3605).

<sup>116</sup> Schill & Wachter, *supra* note 33, at 1296-97 (citation omitted). “According to a recent report prepared for the national Commission on Severely Distressed Public Housing, the amount needed to modernize existing public housing ranges from \$14.5 billion to \$29.2 billion.” *Id.*

<sup>117</sup> See *infra* notes 217-26 for a discussion of gentrification.

<sup>118</sup> See MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH 16 (1995).

<sup>119</sup> See *infra* Parts II and III.

<sup>120</sup> SASSEN, *supra* note 19, at 200.

<sup>121</sup> See MASSEY & DENTON, *supra* note 104.

All of these dynamics created conditions of vulnerability among urban poor minorities that rendered them less-equipped to gain from globalization. Part II below describes globalization, and Part III describes the impact of globalization on urban poor minorities.

## II. GLOBALIZATION

Part II begins by describing the economic characteristics of globalization in terms of the increase in international flows in trade, investment and finance. Part II.B. describes federal law and policy facilitating globalization. Part II.C. describes the particular ramifications of globalization for the United States economy. This will provide the basis for determining what the implications are of a "globalized" U.S. economy for relatively vulnerable populations in the U.S., including inner-city racial minorities.

### A. *The Nature of Globalization*

Globalization might preliminarily be defined as the increasingly international nature of production and consumption.<sup>122</sup> Although international production and consumption is as old as the nation-state, the new era of globalization differs from previous eras in the scale and complexity of international flows involved.<sup>123</sup> These differences in turn shape the impact of globalization on the composition of the U.S. economy.

*Scale.* In the past few decades, international flows of both the "current account" (trade in goods and services) and "capital account" (investment and finance) types have multiplied exponentially.<sup>124</sup> In the area of capital flows, cross-border transactions have increased exponentially in the past few decades. International bank lending increased almost sixteen-fold between 1970 and

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<sup>122</sup> See IMF Survey, *supra* note 1, at 45 ("Globalization refers to the growing economic interdependence of countries worldwide through the increasing volume and variety of cross-border transactions in goods and services and of international capital flows, and also through the more rapid and widespread diffusion of technology.").

<sup>123</sup> See *id.* ("Economic integration among nations is not a new phenomenon. . . . [H]owever, the recent process of global integration is qualitatively different from that of the earlier period.").

<sup>124</sup> These terms are used to categorize international transactions in a country's "balance of payments." The term "balance of payments" refers to a "statement showing all of a nation's transactions with the rest of the world for a given period. It includes purchases and sales of goods and services, gifts, government transactions, and capital movements." PAULA SAMUELSON & WILLIAM D. NORDHAUS, *MACROECONOMICS* 420 (15th ed. 1995).

1995.<sup>125</sup> Worldwide foreign direct investment in the late 1990s achieved “seven times the level in real terms in the 1970s.”<sup>126</sup> “Indirect” investment — the securities markets — grew even more remarkably. Worldwide annual short-term capital flows “now total more than \$2 trillion in gross terms, almost three times those in the 1980s.”<sup>127</sup> Finally, trading in foreign currency has skyrocketed: the “daily turnover in foreign exchange markets increased from around \$10-20 billion in the 1970s to \$1.5 trillion in 1998,” an increase of approximately one hundred-fold.<sup>128</sup>

The United States has heavily participated in these aspects of globalization. An IMF Survey entitled “Globalization: Opportunities and Challenges” (“IMF Globalization Survey”) reports that United States foreign direct investment “more than tripled between the first half of the 1980s and the first half of the 1990s.”<sup>129</sup> Total United States capital flows grew over fifty-fold between 1970 and 1996, from 2.8% of gross domestic product to 151.5%.<sup>130</sup>

On the current-account side, world trade grew at a rate twice as fast as the overall world economy in the postwar era.<sup>131</sup> In the United States, trade volume multiplied nearly twenty-fold between 1970 and 1998.<sup>132</sup> In 1970, the combined value of exports and imports was less than fifteen percent of total gross national product; by 1997 that figure had more than doubled.<sup>133</sup>

Exports have grown, but imports have grown by more: hence another distinct trait of the late twentieth-century U.S. economy is its

<sup>125</sup> Human Development Report, *supra* note 1, at 25.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> IMF Survey, *supra* note 1, at 60. This figure is for both “inward and outward” foreign direct investment. *See id.* at 60 tbl.14 n.1. Compared to overall GDP, however, the value of foreign direct investment is still low. Since it began at 1% of gross domestic product, the final percentage was still a relatively low 3.3% of GDP. *See id.* at 60.

<sup>130</sup> *Id.* at 60, tbl.13. “Gross domestic product can be defined as the money value of the goods and services produced by a given economy in a given period of time. GDP measures an economy’s current account and excludes capital account flows, whose money value can and does exceed that of the current account.” *Id.*

<sup>131</sup> JOHN H. JACKSON ET AL., LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 6 (3d ed. 1995).

<sup>132</sup> This figure represents exports and imports of goods and services, and earnings and payments on foreign investment. *See* 1999 Trade Policy Agenda and 1998 Annual Report of the President of the United States on the Trade Agreements Program, at 19 [hereinafter President’s Trade Report].

<sup>133</sup> *Id.* at 19 fig.1.

persistent trade deficit.<sup>134</sup> The increase in imported goods that has caused the trade deficit has been partially offset by a healthy surplus in trade in services.<sup>135</sup> Important export services include information services, telecommunications services, financial services, and professional services such as lawyering and accounting. Saskia Sassen has dubbed these “producer services,”<sup>136</sup> to distinguish them from “consumer services.” However, trade in services, though increasingly important, still only accounts for a fraction (around one-fourth) of total U.S. trade.<sup>137</sup>

*Complexity.* The trade and finance vectors of globalization described above regularly combine in multiple ways. For example, domestic production might come from a U.S. subsidiary of a foreign company, financed by a syndicate of domestic and foreign banks or private investors. Imported products might come into the United States from a foreign subsidiary that is owned by a U.S. company financed by capital raised on world markets. Lan Cao has documented in detail the increasingly global nature of production.<sup>138</sup> This globalization has often been manifested in the very industrial sectors dominated by U.S. producers in the early postwar era. In the automobile industry, for example, Cao observed that:

A Chevy may be built in Mexico from imported parts and then re-imported into the United States; a Ford built in German plants by Turkish workers and sold in Hong Kong and Nigeria; a Toyota Camry designed by an American designer at Toyota's Newport Beach California Caltex Design Research Center, assembled at the Georgetown, Kentucky plant from American-made parts (except

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<sup>134</sup> From 1980 to 1997, exports increased from 271.8 to 937.4 billion dollars, and imports increased from 290.7 billion dollars to 1,043.5 billion dollars. WORLD BANK, WORLD DEVELOPMENT INDICATORS 1999, at 250 (1999).

<sup>135</sup> In 1998, exports in services were 259.9 versus 181.1 in imports, in billions of U.S. dollars. President's Trade Report, *supra* note 132, at 28.

<sup>136</sup> SASSEN, *supra* note 19, at 90. Sassen has noted: “Central components of the producer services category are a range of industries with mixed business and consumer markets [such as] insurance, banking, financial services, real estate, legal services, accounting, and professional associations.” *Id.* More generally Sassen commented: “Producer services cover financial, legal and general management matters, innovation, development, design, administration, personnel, production technology, maintenance, transport, communications, wholesale distribution, advertising, cleaning services for firms, security and storage.” *Id.*

<sup>137</sup> *See id.*

<sup>138</sup> *See* Lan Cao, Money, Power, and Culture in the Global Economy: Towards a New Sensibility for International Economic Development 15-27 (unpublished manuscript, on file with author).

that the engine and drive trains are still Japanese) and then test driven at Toyota's Arizona proving ground.<sup>139</sup>

This growing complexity in production is so widespread that it accounts for a significant portion of the postwar increase in international trade. As "the volume of world trade has grown, the traditional role of national markets is increasingly eclipsed by an alternative system: trade generated within multinational companies themselves as they export and import among their own . . . subsidiaries."<sup>140</sup> Within the U.S. economy, over forty percent of exports and almost fifty percent of imports are "actually goods that travel not in the open marketplace, but through these intrafirm channels."<sup>141</sup> The IMF Globalization Survey admitted that the "structure of foreign trade has increasingly become intra-industry and intrafirm."<sup>142</sup>

### B. Law and Policy Creating Globalization

Accounts of globalization tend to portray it as autonomous — a self-powered juggernaut whose appearance on the horizon has caught governments off-guard.<sup>143</sup> Yet globalization does not natu-

<sup>139</sup> See *id.* at 21 n.80 (citing BENJAMIN R. BARBER, *JIHAD VS. MCWORLD* 24 & n.7 (1995)).

<sup>140</sup> WILLIAM GREIDER, *ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* 22 (1997).

<sup>141</sup> See *id.*

<sup>142</sup> *Id.* at 46. The reality of intrafirm trade contrasts markedly with the *ideal* that drives international trade liberalization — that of a market in which "normal" trade is open and at arm's length. See David Kennedy, *Receiving the International*, 10 *CONN. J. INT'L L.* 10, 10-11 (1994) ("Broadly conceived, the international trade regime divides traders and trade relations into the normal and the deviant. Normal trade is open, structured solely by comparative costs and pursued by private actors without government intervention. . . . As it turns out, of course, the . . . image of "normal" traders remains largely a fantasy."); cf. Daniel K. Tarullo, *Beyond Normalcy in the Regulation of International Trade*, 100 *HARV. L. REV.* 546, 550 (1987) ("Implicitly or explicitly, [tradelaws] posit certain norms of economic behavior by government, both foreign and domestic. The usual, 'normal' condition is assumed to be nonintervention.").

<sup>143</sup> See, e.g., GREIDER, *supra* note 140 (discussing this view of globalization). In the first chapter, entitled "The Storm Upon Us," Greider described globalism with these words:

Imagine a wondrous new machine, strong and supple, a machine that reaps as it destroys. . . . Think of this awesome machine running over open terrain and ignoring familiar boundaries. It plows across fields and fencerows with fierce momentum that is exhilarating to behold and also frightening. As it goes, the machine throws off enormous mows of wealth and bounty while it leaves behind great furrows of wreckage.

Now imagine that there are skillful hands on board, but no one is at the wheel. In fact, this machine has no wheel or any internal governor to control the speed

rally or inevitably result from market-driven developments in technology. Certainly, stunning improvements in market-driven technology over the past few decades have played an undeniable role in driving globalization. Communications and information technology advances have made it easier to move money and know-how internationally and to coordinate production internationally.<sup>144</sup>

At the same time, however, law and policy have played an important role in spurring globalization forward. International trade agreements have probably been the most important instruments the federal government has used to catalyze globalization. The General Agreement on Tariffs and Trade, established in 1948, provided for six rounds of trade-liberalizing negotiations between 1948 and 1979 that reduced the average level of tariffs imposed by its member states by more than half.<sup>145</sup>

The United States federal government has also lowered barriers to trade in goods and services in bilateral agreements and regional agreements. In the 1990s two highly visible such steps were the North American Free Trade Agreement with Canada and Mexico,<sup>146</sup> and the agreements establishing the hundred-plus member World Trade Organization in 1995.<sup>147</sup> Each event marked far-reaching liberalizing reforms in both trade and investment.

These reduced trade barriers have allowed not only for greater competition in the U.S. by foreign producers, but also for the off-

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and direction. It is sustained by its own forward motion, guided mainly by its own appetites. And it is accelerating.

*Id.* at 11. Greider concluded: "To describe the power structure of the global system does not imply that anyone is in charge of the revolution. The revolution runs itself." *Id.* at 26.

<sup>144</sup> IMF Survey, *supra* note 2, at 50.

<sup>145</sup> These six negotiation rounds occurred in: Annecy, France, in 1948; Torquay, England in 1950; and thereafter in Geneva in 1956, 1960-61 (the "Dillon Round"), 1964-67 (the "Kennedy Round"), and 1973-79 (the "Tokyo Round"). See JACKSON, *supra* note 131, at 314. The ratio of duties collected to dutiable imports in the United States, for example, was 12.1 in 1961 and 5.1 in 1981, after the Tokyo Round. See *id.* at 6. For GATT members more generally, the end of the Kennedy round produced tariff reductions on 70% of total imports, with the majority of the reductions 50% or greater. See JOHN H. JACKSON, WORLD TRADE AND THE LAW OF GATT 228 (1969). The Tokyo Round effected a further reduction of about 35% in "the industrial tariffs of the major industrial participants." JOHN. H. JACKSON ET AL., IMPLEMENTING THE TOKYO ROUND 13 (1984).

<sup>146</sup> See North American Free Trade Agreement Implementation Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993) (codified at 19 U.S.C. § 3311 (1994)) (implementing North American Free Trade Agreement, Dec. 8, 1992, Can.-Mex.-U.S., 32 I.L.M. 289).

<sup>147</sup> See Uruguay Round Agreements Act, Pub. L. 103-465, 108 Stat. 4809 (1994) (codified at 19 U.S.C. § 3501 (1994)) (implementing Final Act Embodying the Results of the Uruguay Round of Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125 (1994)).

shore relocation of production facilities by U.S. manufacturers who seek the production-cost advantages offered elsewhere. This consequence of trade liberalization agreements was memorably characterized in 1992 by Presidential candidate Ross Perot as a “giant sucking sound.”<sup>148</sup> Whatever the accuracy of Perot’s characterization, and whatever the ultimate desirability of the trend, it seems indisputable that the reduction in trade barriers has enabled both foreign competition and U.S. relocation, thereby reducing U.S. manufacturing and accelerating U.S. deindustrialization.

In finance, the federal government created a number of regulatory devices that helped globalize securities markets.<sup>149</sup> Thus, while some of the fuel driving globalization came from technological innovation, a good portion of it also arose from deliberately pursued policies by governmental actors. In the United States, the executive and legislative branches implemented into law a host of liberalizing measures in trade, investment and finance that facilitated the internationalization of the U.S. economy.<sup>150</sup> To point this out is not to compel a conclusion that globalization is desirable or undesirable; it is only to compel the conclusion that globalization cannot be viewed as a natural or inevitable phenomenon. Rather, the dynamics that the term “globalization” encompasses result at least in part from governmental practices, and governmental actors must therefore be held at least partially accountable for their ill effects.

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<sup>148</sup> See George F. Will, *Free Trade, Faster Change*, WASH. POST, Oct. 11, 1992, at C7 (commenting that “Ross Perot, the timidest Texan, quakes about the menace of Mexico, saying NAFTA would apply ‘a giant sucking-sound vacuum on what used to be industrial America’”).

<sup>149</sup> These included the creation of American Depositary Receipts and Rule 144A, which encouraged foreign issuers to issue into the U.S. This helped stimulate a trend by which capital offerings would be made in at least two securities markets at once (so-called “global” offerings).

<sup>150</sup> For example, the United States Bilateral Treaty (“BIT”) Program played an important role in internationalizing investment. The BIT Program was “formally inaugurated” in 1977 with a treaty-negotiating initiative of the State Department. See Kenneth J. Vandavelde, *U.S. Bilateral Investment Treaties: The Second Wave*, 14 MICH. J. INT’L J. 621, 621 (1993).

[I]n a remarkably short period of time, BITs have become an important part of the foreign investment landscape. . . . In the 1990s, the pace of BIT signings increased dramatically and by mid 1996, over one thousand BITs had been signed, with almost every country on the globe a party to at least one such treaty.

Andre T. Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. J. INT’L L. 639, 652 (1998).

Of course, these liberalizing measures were pursued in the belief that they would generate positive effects. Classical economic philosophy holds that the liberalization of market activity will increase both national and international efficiency. Because efficiency maximizes wealth creation, such policies could also be said to maximize social welfare.

To equate social welfare with aggregate social wealth, however, is to adopt only one of a number of potential measures of social welfare. Even if one ignores measures of welfare not related to wealth, the equation of social welfare with national wealth overlooks distributive concerns. Indeed, efficiency-increasing measures such as economic liberalization may exacerbate preexisting distributive inequalities. Classical economic measures of efficiency and welfare are simply “indifferent to the distribution of income and wealth.”<sup>151</sup>

In the United States among the groups that bear the brunt of this distributive inequality and therefore potentially of the costs of liberalization are racial minorities in the inner city. Part II.C. will articulate the specific effect of globalization on inner cities. Part III will indicate how these specific economic effects exacerbate a preexisting socioeconomic hierarchy of race, income and geography.

### C. *Transformations Resulting from Globalization*

The dynamics discussed in Part II.A. above describe two deeply significant macroeconomic transformations in industrialized countries: the global dispersion of goods production, and the shift from goods export to goods import and services export.

One of the most visible aspects of globalization is the degree to which geographically diverse economies are participating in types of production that had previously been concentrated in the West. “Manufacturing employment as a share of total employment has declined continuously in most advanced economies since the beginning of the 1970s.”<sup>152</sup> The U.S. trade deficit in goods<sup>153</sup> has re-

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<sup>151</sup> See Letter from Chris Scott, Reader in Economics, London School of Economics, Apr. 25, 2000 (on file with author). That is, in any given market, there may be equilibria that have different distributional consequences, but that are equally “efficient” in the economic sense that “all of the probable trades have been made.” HAL. R. VARIAN, *INDUSTRIALIST MICROECONOMICS* 17 (5th ed., 1999) (discerning Pareto optimality).

<sup>152</sup> IMF Survey, *supra* note 1, at 47. The *IMF Survey* further reported that:



sulted in part from increasing competition with non-U.S. manufacturers and in part from the offshore relocation of U.S. manufacturing. Whether due to western-company relocation or the growth of nonwestern competitors, manufacturing is now much less economically significant in the West and much more significant in medium and low income countries in Asia and Latin America.

At the same time, as noted above, the West is increasingly specializing in services.<sup>154</sup> Among the industrialized world, according to the IMF, "the share of employment in services in the United States is highest, at about seventy-three percent currently."<sup>155</sup> These dynamics reinforce each other: as manufacturing disperses globally, an increasing array of intermediary services becomes necessary to coordinate global production, and the emergence of such service production in turn facilitates further manufacturing dispersal.<sup>156</sup>

This shift from goods to services production has been called "deindustrialization" and it has "coincided with the growing global integration of economies."<sup>157</sup> The transformation of the U.S. econ-

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For the industrial countries as a whole, the share of manufacturing employment declined from about 28 percent in 1970 to about 18 percent in 1994. . . . Deindustrialization began as early as the mid-1960s in the United States, and the trend there has been one of the most pronounced, with the share of manufacturing employment began declining steeply from about 28 percent in 1965 to 16 percent in 1994.

*Id.* at 47.

<sup>153</sup> The increase in imports leading to the trade deficit has been especially strong in consumer goods but also increasingly capital goods. In 1998 capital goods were 216.8 and consumer goods were 271.9 in imports, as compared to 301.6 and 79.6 in exports. See President's Trade Report, *supra* note 132, at 22, 25.

<sup>154</sup> The IMF Globalization Survey reported that "[t]he other side of [the decline of manufacturing] has been a continuous increase in the share of employment in services." IMF Survey, *supra* note 1, at 48.

<sup>155</sup> *Id.*

<sup>156</sup> In *The Global City*, SASSEN observed that:

[P]roducer services have become central components in the work process of both goods- and service-producing firms. . . . The expansion in the use of such services as intermediate inputs is linked with the broader technical and spatial reorganization of the economy. . . . [P]articipation in a world market has created a need for a range of specialized services, and these have in turn facilitated the development of a world market. In brief what is characteristic in the contemporary phase is the ascendance of such services as intermediate inputs and the evolution of a market where they can be bought by foreign or domestic firms and governments.

SASSEN, *supra* note 19, at 124.

<sup>157</sup> IMF Survey, *supra* note 1. The *IMF Survey* attributes deindustrialization both to a decline in expenditure in manufacturing and a relatively greater increase in productivity of

omy — from an economy with major goods exports and negligible services activity circa 1970, to a major goods-importer and services-exporter circa 1990 — has played a major role in the impact of globalization on the inner city. Connecting deindustrialization with the urban deterioration described in Part I, several adverse trends for inner cities emerge.

Because city centers harbored most traditional manufacturing, “deindustrialization” has affected them most acutely. In the 1970s and 1980s, Philadelphia, Chicago, New York and Detroit respectively lost 64% (resulting in the elimination of 160,000 jobs), 60 percent (326,000 jobs), 58% (520,000 jobs), and 51% (108,000 jobs) of their manufacturing sectors.<sup>158</sup> This was also true more generally for the “ten largest old metropolitan areas of the Northeast and north central states.”<sup>159</sup>

Although the traditional industrial sector left cities, cities developed a new niche in the increasingly important provision of producer services.<sup>160</sup> These financial, telecommunications and professional intermediary services are necessary to any large-scale enterprise, whether manufacturing or service-sector. They are distinct from in-house management services of corporations, many of which have moved to the suburbs.<sup>161</sup>

Producer service-providers have consolidated in urban areas.<sup>162</sup> Accordingly, producer services have become a much higher per-

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manufacturing (meaning that technological advances have required less labor to produce the same amount of manufactures). *See id.* at 48-49.

<sup>158</sup> See Clarence Lusane, *Persisting Disparities: Globalization and the Economic Status of African Americans*, 42 HOW. L.J. 431, 437 (1999). This is also supported by Sassen’s data for U.S. and N.Y.C. 1977-1985. Decline in manufacturing in city very steep as compared to rest of country (22% vs. 1%). “[T]he share of producer services jobs in New York, London and Tokyo is at least a third higher and often twice as large as the share of these industries in total national employment.” SASSEN, *supra* note 19, at 131.

<sup>159</sup> SASSEN, *supra* note 19, at 202 (stating that “growing international competition, inadequate investments for modernization of plants, leading to lower productivity, the development of technologies that made possible locating production and assembly facilities in low-wage countries or low-wage regions of the United States” all played a role here).

<sup>160</sup> See *supra* Part II for definition.

<sup>161</sup> See *supra* Part I.

<sup>162</sup> For example, the telecommunication services often necessary to support “producer services” tend to be concentrated in urban areas. “Telecommunications facilities have not been widely dispersed; while the technology has made possible the geographic dispersal of many activities, the distinct conditions under which such facilities are available have promoted centralization of the most advanced users in the most advanced telecommunications centers.” SASSEN, *supra* note 19, at 109.

centage of employment in these areas.<sup>163</sup> Various cities may have specialties in one or another area of services, but in the U.S. producer services are overrepresented in all the major cities.<sup>164</sup>

Thus, cities now “command and [are] at the heart of a globally dispersed production system.”<sup>165</sup> One consequence is that cities have become more connected internationally and less generative of growth for the national economy. Although conventional wisdom dictates that cities function as “seedbeds” that “promote the diffusion of growth across the national territory,”<sup>166</sup> this traditional dynamic may be obsolete “[n]ow that manufacturing has declined significantly as a share of employment in major cities and . . . producer services have . . . become a leading sector.”<sup>167</sup> The new role of the city may be determined by a global economy that diverts economic flows away from lower strata around the city. Saskia Sassen has interpreted the changes in production flows to indicate that “growth predicated on a global market orientation induces discontinuity in the urban hierarchy.”<sup>168</sup> As Part III shows, this discontinuity may disproportionately harm racial minorities in American inner cities.

In sum, the economic base of city centers over the last few decades has shifted from manufacturing and associated management to producer services such as finance, telecommunications and lawyering.<sup>169</sup> These changes were not solely driven by technological innovations. Rather, the federal government took deliberate measures liberalizing trade, investment and finance.<sup>170</sup> These steps were taken in furtherance of a classic economic policy approach that predicted that liberalization would increase aggregate national

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<sup>163</sup> At the same time, national growth in producer services is outpacing city growth. Even though a few cities have become centers for concentrated provision of producer services, “[t]he evidence clearly shows that in all three countries the growth of producer services were higher at the national level than in those cities.” *Id.* at 129.

<sup>164</sup> *See id.* at 148-49.

<sup>165</sup> *Id.* at 110.

<sup>166</sup> *Id.* at 127.

<sup>167</sup> *Id.* at 129.

<sup>168</sup> *Id.* at 165.

<sup>169</sup> *See id.* at 127. “The decline in manufacturing and the shift to service-dominated employment, the rapid growth of producer services, and the further service-intensification of the economy, are trends evident in . . . cities.” *Id.*

<sup>170</sup> One might ask why the government is being portrayed as an autonomous force since this is a democracy. This raises the question of the extent to which government decision-makers are “captured” by particular interests — in this case, interests favoring economic liberalization — in such a way that they antagonize majority will. For a discussion of this question, see Thomas, *supra* note 2.

wealth and therefore welfare. The theory behind this policy, however, does not adequately take into account the distribution of wealth. The theory therefore does not address the possibility that entrenched socioeconomic forces antagonizing “discrete and insular” groups — such as racial minorities in the inner city — might prevent those groups from benefiting proportionately in the gains of globalization. Rather, the theory assumes a relatively mobile population, and whatever the truth of the proposition generally, mobility does not characterize the bottom of the U.S. socioeconomic hierarchy, which is instead rigidly constructed. The costs of globalization may therefore concentrate at this rigidly constructed bottom.

Economists invariably leave it to the political process to address such distributive concerns; social justice demands that government do precisely that. This imperative is all the stronger given the government’s role in constructing this hierarchy of race, income and geography to begin with. Part III examines the particular ramifications of contemporary economic trends for minority populations concentrated in the inner cities.

### III. EFFECT OF GLOBALIZATION ON THE INNER CITY

Before continuing, it may be useful to provide some description of the racial minority groups that disproportionately inhabit the inner city. While the cultural, linguistic and historical heterogeneity of these groups is extensive, for purposes of the analysis of this Article, racial minority groups living in impoverished urban areas can be broken down into two categories: those who were born in the United States and those who were not. Both groups are racially diverse within themselves. Those not born here include immigrants from Africa, Asia, the Caribbean, Latin America and the Middle East. Those born here include African Americans, most of whom migrated from the rural South in the first half of the century; Mexican Americans that are descended from communities living in the South and West when those communities became part of the United States; and descendants of Latina/o, African, Arab, Asian, and Caribbean immigrants.

Of course, individuals within each of these racial categories exist at every income level and in widespread geographical ranges, and the extent to which individuals in these racial categories are poor

varies depending on the particular category.<sup>171</sup> Along those lines, it is important to stress that this paper argues that globalization will have an adverse effect on populations characterized not only by racial minority status, but also by economic status and geographical location.<sup>172</sup>

The trends of suburbanization and deindustrialization have been accompanied by the emergence of a “global city” whose specialty is the provision of “producer services” that coordinate a global production system, and whose links to the local economy are more attenuated than those of traditional manufacturing production had been. The transformation of the city from a manufacturing base to a globalized nexus of producer services has had several adverse consequences for the urban poor, who are disproportionately racial minorities. Among the potential ramifications of such a system is the exacerbation of a preexisting socioeconomic hierarchy that has concentrated poor racial minorities in depressed urban areas. This hierarchy manifests in the conditions affecting employment, housing and infrastructure in the inner city.

#### A. *Employment.*

In the global city, with its focus on highly skilled producer services, one’s ability to earn a “living wage” is increasingly tied to one’s skill level.<sup>173</sup> Three trends arising out of the transformation

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<sup>171</sup> For a discussion of urban immigration see JOHN HIGHAM, *SEND THESE TO ME: IMMIGRANTS IN URBAN AMERICA* (1984) (1975), and JEFFREY G. REITZ, *WARMTH OF THE WELCOME: THE SOCIAL CAUSES OF ECONOMIC SUCCESS FOR IMMIGRANTS IN DIFFERENT NATIONS AND CITIES* (1998).

<sup>172</sup> People of color that are middle class do not belong to this vulnerable population, and this Article does not necessarily predict that globalization will adversely impact them. Globalization may also benefit people of color that are on the poverty threshold. An expanding economy will provide new work opportunities even at the lowest skill levels, for example in the retail service industries, that will enable families previously living below the poverty threshold to rise above it. See, e.g., U.S. Census Bureau, *Number of African-Americans in Poverty Decline While Income Rises*, Press Release CB98-176, Sept. 24, 1998; U.S. Census Bureau, *Poverty Level of Hispanic Population Drops, Income Improves*, Press Release CB98-178, Sept. 24, 1998. This Article addresses primarily the relative lack of mobility of those living and working just above the poverty threshold.

<sup>173</sup> There is no readily accepted definition of the term “living wage” in the literature. See Peter B. Edelman, *Welfare Reform Symposium*, 50 ADMIN. L. REV. 579, 586 (1998). I use the term to mean the wage necessary to allow an individual and his or her dependents to live above the poverty line. The exact quantity of a living wage, therefore, depends on a number of different factors. Obviously, it depends on how one defines the poverty line. As the U.S. Census Bureau defined it in 1998, the poverty threshold for a one-person household was \$8,316.00; \$10,634 for a two-person household; \$13,003 for a three-person household, and; \$16,660 for a four-person household. See U.S. Census Bureau, *Current Population Reports*,

of the city resulting from the globalization of the economy have reinforced impoverishment in many inner-city communities.

*Decline of Manufacturing Employment.* First, the decline of manufacturing employment has had a significant impact on the urban poor, and therefore on many racial minority groups. While some of this decline has resulted from obsolescence due to technological advances, some of the decline is due to the relocation of manufacturing work.<sup>174</sup> The decline in manufacturing also means a decline in jobs that require relatively little previous training but offer a living wage. The increase in income inequality accompanying the shift to a service economy has been well documented.<sup>175</sup>

Of the population under study, the decline in traditional manufacturing has primarily affected African Americans and Chicanas/os.<sup>176</sup> This is true even though manufacturing sectors in the United States have hardly acted as havens of racial equality. In the first half of the twentieth century, as these groups migrated to northern city centers, they met with hostility and exclusion from labor unions<sup>177</sup> reinforced in places by labor regulations.<sup>178</sup> By the

Series P60-207, Poverty in the United States: 1998, at A-4 tbl.A-2 (1999) [hereinafter Poverty Report]. There has been some dispute, however, over the Bureau's methodology in measuring both income and need. See *id.* at xiv; U.S. Census Bureau, Current Population Reports, Series P60-205, Experimental Poverty Measures: 1990 to 1997 (1999). Because wage earners often have dependents, the definition of a living wage may also depend on one's conceptualization of the "normal" division of labor within the family. See Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality, and Labor Speech*, 82 GEO. L.J. 1903, 1943 (1994) (arguing that some unions "adopted and marketed the family wage ideology, which defined women's role as homemakers and caretakers and men's role as waged workers, in support of its demand for a 'living wage' — a male wage adequate to support non-working wives and daughters").

<sup>174</sup> See *infra* note 207.

<sup>175</sup> See *infra* notes 201-09.

<sup>176</sup> See Lusane, *supra* note 158, at 438 ("For those African Americans who have less than a college education, the loss of manufacturing jobs seriously undermines their opportunities for employment."); see also LESTER HENRY, NAFTA AND GATT: WORLD TRADE POLICY IMPACTS ON AFRICAN AMERICANS 11 (1995) ("Plant closings [have been] heaviest in the Northeast and in the old South, the two areas of the country where African Americans are most populous."); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR (1996); John Bound & Harry Holzer, *Industrial Shifts, Skills Levels, and the Labor Market for White and Black Men*, REV. ECON. STAT., Aug. 1993, at 395 ("Up to half of the huge employment declines for less-educated blacks might be explained by industrial shifts away from manufacturing toward other sectors."). The term "Chicano" can be defined as a person of Mexican decent living in the United States. See Carlos Villareal, *Culture in Lawmaking: A Chicano Perspective*, 24 U.C. DAVIS L. REV. 1193, 1193 & n.2 (1991).

<sup>177</sup> See JILL QUADAGNO, POLICY AND PREJUDICE THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY (1994); David E. Bernstein, *The Law and Economics of Post-Civil War Restrictions on Interstate Migration by African-Americans*, 76 TEX. L. REV. 781, 843

1970s, these racial barriers to membership had largely dissolved. Even after unions largely relinquished such entry-level barriers, many continued to be criticized for the poor representation of racial minorities in their leadership ranks.<sup>179</sup> Although racial minorities have not been able to achieve completely egalitarian treatment from unions, by the 1970s they had largely succeeded in joining the union rank-and-file in traditional manufacturing sectors, thereby receiving the economic security provided by unions for their members.

This set of dynamics is supported, for example, by Clarence Lusane's study of the impact of NAFTA on minorities. The United States government has argued that NAFTA has been beneficial on the whole for the U.S. economy.<sup>180</sup> However, neither the benefits nor the losses are evenly spread, and Lusane's research suggests that NAFTA has so far had a disproportionately adverse effect on African Americans because of preexisting vulnerabilities in African American communities. Key among these effects has been the loss of low-skilled jobs.<sup>181</sup> NAFTA resulted in a net loss of manufactur-

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n.393 (1998) ("Northern and Midwestern labor unions . . . opposed African-American migration, sometimes violently.").

<sup>178</sup> See David Bernstein, *The Shameful, Wasteful History of New York's Prevailing Wage Law*, 7 GEO. MASON U. CIV. RTS. L.J. 1, 1-2 (1997) (arguing that both federal and state "prevailing wage" laws have discriminatory impacts on racial minorities and especially African Americans); Harry Hutchinson, *Toward a Critical Race Reformist Conception of Minimum Wage Regimes*, 34 HARV. J. LEGIS. 93, 124 (1997) (describing how "unions took advantage of the monopoly powers granted to them by the [National Industrial Relations Act] . . . to displace African American workers").

<sup>179</sup> See Hutchinson, *supra* note 180, at 124-25.

<sup>180</sup> See UNITED STATES TRADE REPRESENTATIVE, STUDY ON THE OPERATION AND EFFECT OF THE NAFTA ii-iii (1997). NAFTA is deemed to have created slightly more jobs than it has eliminated. See *id.* (asserting that NAFTA "has resulted in a modest increase in United States net exports, controlling for other factors" and that it "has boosted jobs associated with Mexico between roughly 90,000 and 160,000"); Reich Says NAFTA's Net Effect Will Be More Jobs for United States, Int'l Trade Rep. (BNA) (July 21, 1993). There are also reports that dispute the Trade Representative's findings. See, e.g., ROBERT E. SCOTT, NAFTA'S PAIN DEEPENS (Economic Policy Institute Paper, 1999).

<sup>181</sup> See BARTHOLOMEW ARMAH, THE DEMOGRAPHICS OF TRADE-AFFECTED SERVICES AND MANUFACTURING WORKERS (1987-1990) ("Manufacturing industries that experienced a decline in positive net trade-related unemployment were more likely to employ black females and unskilled (i.e., laborers) and less educated (i.e., high school graduates) black and white workers than were other manufacturing industries."). This Article does not address the important issue of how NAFTA affects those living in the agreement's other member states, Mexico and Canada. For a discussion of Latina/o identity both within and outside the United States, see Elizabeth M. Iglesias, *Human Rights in International Economic Law: Locating Latinas/os in the Linkage Debates*, 28 U. MIAMI INTER-AM. L. REV. 361-369-71 (1997), and David Viogt, *The Maquiladoras Problem in the Age of NAFTA: Where Will We Find Solutions?*, 2 MINN. J. GLOBAL TRADE 323 (1993).

ing jobs, which were replaced by jobs in the service sector. Consequently, those who lost their jobs in manufacturing were less likely to find comparable new employment.<sup>182</sup> This situation was “compounded by the fact” that the replacement service-sector jobs “paid less and offered less benefits.”<sup>183</sup>

New industrial growth in which relatively “formal” work structures are maintained has been located in the outer ring of metropolitan areas and therefore away from concentrated minority populations, and in regions that tend to have less concentrated minority populations in the inner city.<sup>184</sup> Much new growth manufacturing, however, reflects the organizational trends transforming traditional manufacturing sectors, and tends to be lower-wage and lower-security.<sup>185</sup> This is consistent with the second trend, the “informalization” of employment.

“*Informalization*” of Employment. The second trend is the informalization or “downgrading” of urban manufacturing sectors.<sup>186</sup> This has occurred at the same time as the percentage of union organization has decreased.<sup>187</sup> Some argue this has increased the

<sup>182</sup> See Lusane, *supra* note 158, at 441 (citing Bureau of Labor statistics for proposition that “[o]f the jobs lost as a result of NAFTA, manufacturing workers were the largest share of displaced worker (27%) and the least likely to be re-employed.”).

<sup>183</sup> See *id.* at 445. “The service industry represented 112 percent of the net new jobs created since NAFTA. Those new service jobs paid, on average, only 77 percent of the manufacturing jobs that had been eliminated.” *Id.*

<sup>184</sup> See *id.* at 438; see also Henry, *supra* note 178, at 11 (“The pattern of firms, both foreign and domestic, when choosing sites for opening new plants, has been away from predominantly nonwhite areas. . . . The Japanese and other German firms have also shown a similar preference for plant location in suburban and sunbelt areas where few nonwhites reside.”); ROBERT CHARLES SMITH, *RACISM IN THE POST CIVIL RIGHTS ERA: NOW YOU SEE IT, NOW YOU DON’T* 134 (1995) (noting that “[a] study of the location decisions of Japanese firms in the United States and of American auto companies found a fairly consistent pattern of locations in rural and suburban areas about thirty miles from the nearest concentration of blacks, a distance thought to be about the limits of worker commuter time”). Lusane raises the possibility that this is deliberate, but notes that “[e]ven if premeditation is not present, the consequences of these site decisions exacerbate the job search crisis growing among the urban black poor.” Lusane, *supra* note 158, at 438.

<sup>185</sup> See SASSEN, *supra* note 19, at 218 (“[M]ajor new industries, notably electronics, have a high proportion of low-wage jobs in production and assembly, while several of the older industries have underdone a social reorganization of the work process resulting in a growth of nonunion plants and a rapid increase in subcontracting.”).

<sup>186</sup> See *id.* “The historical forms assumed by [industrial] expansion . . . promoted the generalization of formal labor market relations [such as unionization and Fordism] and acted against the casualisation of work. . . . Many of the patterns today work in the opposite direction, promoting small scales, less standardization, and an increasingly casualised employment relation.” *Id.* at 249.

<sup>187</sup> See, e.g., Robert J. Lalonde & Bernard D. Meltzer, *Hard Times for Unions: Another Look at the Significance of Employer Illegalities*, 58 U. CHI. L. REV. 953, 953 (1991) (“It is well known



bargaining power of employers and helped to drive down wages and benefits.<sup>188</sup> The casualization of work has enabled employers to hire more part-time and temporary work. Part-time or temporary work usually involves lower wages and fewer benefits.<sup>189</sup>

An extreme example of this informalization process is the rise of “sweatshop” labor. Whereas the decline in traditional manufacturing most directly impacts racial minorities that were born here, the rise in casual manufacturing most directly impacts racial minorities who were not born here. This labor is provided primarily by immigrants who are also members of racial minority groups in the United States.<sup>190</sup>

One particular type of sweatshop labor is industrial homework. A home worker works “in or from the home for an employer or contractor who supplies the work.”<sup>191</sup> Common types of homework include the production of clothing and clothing accessories.<sup>192</sup> These industries are also among the most frequent violators of federal labor protections.<sup>193</sup> “[A]way from the watchful eye of the public and the factory inspector, . . . homework tended to be the least amenable to regulatory enforcement and the most susceptible to

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that the percentage of American workers in the private sector belonging to labor unions. . . has declined sharply in the last four decades.”); Paul C. Weiler, *Promises to Keep: Securing Workers' Rights to Self-organization Under the NLRA*, 96 HARV. L. REV. 1769, 1771 (1983) (“No feature of contemporary labor-management relations in the United States is more significant than the diminishing reach of collective bargaining.”).

<sup>188</sup> See Charles B. Craver, *Mandatory Worker Participation Is Required in a Declining Union Environment to Provide Employees with Meaningful Industrial Democracy*, 66 GEO. WASH. L. REV. 135, 138 (1997) (“As union membership has declined . . . competitive pressures have caused unionized firms to moderate wage increases and decrease fringe benefit protections.”); Peter Kuhn & Arther Sweetman, *Wage Loss Following Displacement: The Role of Union Coverage*, 51 INDUS. & LAB. REL. REV. 384, 395-96 (1998) (“Long-tenured union workers who lose their union coverage experience, on average, a massive 30 log point decrease in wages, attributable purely to this change in union coverage and not to any other observable characteristic.”).

<sup>189</sup> See Mark Berger, *The Contingent Employee Benefits Problem*, 32 IND. L. REV. 301, 304-05 & n.10 (1999).

<sup>190</sup> See Laura Ho et al., *(Dis)assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 HARV. C.R.-C.L. L. REV. 383 (1996); Leo L. Lam, *Designer Duty: Extending Liability to Manufacturers for Violations of Labor Standards in Garment Industry Sweatshops*, 141 U. PA. L. REV. 623 (1992).

<sup>191</sup> Laura Helene Gonshorek, Note, *Crisis After Dole: The Plight of Modern Homeworkers*, 8 HOFSTRA LAB. L.J. 1 n.4 (1990).

<sup>192</sup> See *id.* at 167 (listing items commonly produced by homemaker as “women’s apparel, ‘nonhazardous’ jewelry, handkerchiefs, belts and buckles, embroidery, gloves and mittens, and knitted outerwear.”).

<sup>193</sup> See, e.g., *ILGWU v. Donovan*, 722 F.2d 795, 801 (D.C. Cir. 1983), *cert. denied*, 469 U.S. 820 (1984).

low wages, long hours, unhealthy conditions, and other exploitation.”<sup>194</sup> Industrial homework “partly involves the same industries that used to have largely organized plants and reasonably well-paid jobs.”<sup>195</sup> The occupants of these positions are often poor, female, minority, and recent immigrants from Africa, Asia and Latin America.<sup>196</sup>

In the early postwar era, the federal government placed a “virtual ban” on industrial homework, ostensibly due to its inability to enforce labor protections in such settings.<sup>197</sup>

This ban was rescinded in 1989, reflecting the deregulatory policies of the Reagan Administration’s Department of Labor.<sup>198</sup> Since then, homework and other types of sweatshop labor have become an increasing problem both within the United States and abroad. While the causes of this problem are complex and certainly include the influx of a workforce willing to work at lower wages, many commentators have expressed the concern that the possibility of relocation not just of workers, but also of products created by globalization allows for a “race to the bottom” in which manufacturers and other employers exercise the threat of relocation to gain significant concessions in the terms of employment. As the recent protests in Seattle during the Ministerial Conference of the World Trade Organization indicate, many argue that this race to the bottom is facilitated by the existence of an international legal structure in which the mandate of economic liberalization is not accompanied by a commitment to labor standards or other quality-of-life protections.

There are many reasons cited for why informalization of work relations in low-skill sectors has increased. First, relocation and decline of manufacturing has obviously played a role since many of the relocated jobs were at the core of the traditionally unionized workforce. Service-sector jobs are much less likely to be union-

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<sup>194</sup> Bruce Goldstein et al., *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L. REV. 983, 1059 (1999) (quotation omitted).

<sup>195</sup> SASSEN, *supra* note 19, at 281, 218

<sup>196</sup> See Gonshorek, *supra* note 191, at 167.

<sup>197</sup> See *id.* at 174.

<sup>198</sup> *ILGWU v. Dole*, 729 F. Supp. 877 (D.D.C. 1989) (upholding Department of Labor regulation rescinding ban on homework). For a discussion of the *Dole* decision and its relation to existing federal labor law on industrial homework, see Gonshorek, *supra* note 191.

ized.<sup>199</sup> Many have pointed to the influx of immigrant populations as a second cause of unionization's decline. According to this argument, newly arrived immigrants are willing to work for much less favorable terms than people born in the United States, so they encourage a "race to the bottom" in the manufacturing sectors.

Saskia Sassen makes a useful observation about globalization and immigration. "Linking the informalization and casualisation of work to growth trends takes the analysis beyond" the idea that immigrants cause informalization. Such a link "suggests, rather, that the basic traits of advanced capitalism may promote conditions for informalization. The presence of large immigrant communities then can be seen as mediating in the process of informalization rather than directly generating it: the demand side of the process of informalization is therewith brought to the fore."<sup>200</sup>

A brighter account of the decline in "formal" work relations posits that the U.S. economy is adjusting appropriately to the new challenges of globalization, with its increased competition and volatility, by becoming more competitive and more flexible. If this is true, however, it does not change the fact that low-skill jobs are not as well compensated as they once were. Where discrete groups are concentrated in this low-skill work such a skewed impact is unjust.

*Stratification of Workforce According to Skill Level.* Many "symbolic analyst" jobs associated with service sectors such as investment banking and lawyering are highly compensated. Given that such services are increasingly exported, it is correct to say, as is often said by proponents of globalization, that new jobs associated with trade liberalization are on average higher paying than those they replaced.<sup>201</sup> However, the entry barriers to these high-paying jobs

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<sup>199</sup> See Glen Burkins, *Union Membership Fell Further in 1997: Continued Decline Came Despite Huge Outlays Assigned to Recruiting*, WALL ST. J., Mar. 18, 1998, at A2 (noting that one possible cause for declining union membership could be that "many of the jobs remain largely resistant to unionization — for example, high technology and financial services").

<sup>200</sup> SASSEN, *supra* note 19, at 282.

<sup>201</sup> See, e.g., Presidential Proclamation No. 6690, 59 Fed. Reg. 26,407 (1994) ("U.S. Exports Equal U.S. Jobs,' the theme of World Trade Week [1994], illustrates why the United States must make the push to increase the involvement of American business in international markets."). President Clinton further stated:

Exports have become a critical engine of our Nation's economic progress. In the past 5 years, exports of goods and services have been responsible for more than 40 percent of U.S. economic growth. Today one in every five manufacturing jobs is linked to exports. Exports of goods and services support some 10.5 million jobs.

are significant, because they require relatively extensive postsecondary education and training.

The people that used to or would have worked in the manufacturing sector are not easily able to land these new high-paying jobs. Instead, many transfer to low-skill service jobs that pay less than manufacturing jobs requiring the same skill level. Thus, the transformation of highly developed economies into service economies has arguably been accompanied by a reorganization of the work force into a hierarchy in which there are many new high-paying service jobs, but also in which a greater proportion of the total jobs available are "low-wage" jobs than before.<sup>202</sup>

These low-skill, low-paying service jobs come in several varieties. First, not all producer services jobs are highly compensated.<sup>203</sup> The vast armies of customer service and telemarketing representatives manning the contemporary service economy often earn very low wages. Second, producer services directly generate demand for support services such as cleaning and maintenance, delivery, office support (courier services and document production), and so on.<sup>204</sup> Third, producer services indirectly generate low-wage service jobs by producing a new high-income workforce that generates demand for residential and personal support services.<sup>205</sup> The concern about the impact of globalization is not primarily a concern about increased unemployment. To the contrary, lower-skill service-sector jobs are abundant. However, such jobs in service sectors as compared to manufacturing are less stable, less likely to be full-time, and offer fewer benefits.<sup>206</sup> Thus, deindustrialization has occurred at the same time as "marked increases in wage inequality . . . between the more skilled and less skilled."<sup>207</sup>

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And exports lead to better paying jobs. American workers producing for export earn 17 percent more than the national average wage.

*Id.*

<sup>202</sup> SASSEN, *supra* note 19, at 217.

<sup>203</sup> *See id.* at 281.

<sup>204</sup> *See id.*

<sup>205</sup> *See id.*

<sup>206</sup> Particularly, "in a range of office occupations, from secretaries, word processors, and file clerks to switchboard operators, average median weekly earnings were lower in the nonmanufacturing industries than in manufacturing." *Id.* at 225. Indeed, low-skill service jobs in manufacturing-sector firms are likely to be better compensated than the same jobs at service-sector firms.

<sup>207</sup> IMF Survey, *supra* note 1, at 53. This is the case for the United States that has relatively flexible wages. *See id.* at 55. In countries with less flexible wages, the increases have

The general instability resulting from globalization may also disproportionately harm racial minorities. A GAO study, for example, found that minority groups experience longer unemployment spells and the largest wage losses in their new jobs.<sup>208</sup> In addition to the “last hired, first fired” issue, the simple persistence of employment discrimination at the upper rungs of firms can make minorities relatively more vulnerable to them.<sup>209</sup>

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been in “rises in unemployment among the less skilled.” *Id.* at 56. It should be noted that the *IMF Survey* does not believe the bulk of this inequality arises from increased international trade. The *Survey* concludes that “[r]ather than by competition from low-priced imports, the increase of wage inequality in the 1980s and 1990s appears to have been driven principally by advances in technology that favor skilled labor.” *Id.* at 58. The IMF’s reasoning for this conclusion, however, is in my view not entirely convincing. The primary support presented for this proposition is evidence that “prices of import-competing, low-skill-labor-intensive goods” have not fallen in real terms. The hypothesis, called the “Stolper-Samuelson Theorem,” see Wolfgang F. Stolper & Paul A. Samuelson, *Protection and Real Wages*, 9 REV. ECON. STUD. 58 (1941), is that if low-skill labor in developing countries truly poses a threat to low-skill, but better compensated, labor in industrialized countries, then this threat would be evidenced in the following way: imports from developing countries produced with low-skill labor would be cheaper than the counterpart goods produced in industrialized countries; this would require domestic producers of such goods to lower their prices to stay competitive; this would reduce the profitability of such production; this would induce producers to shift out of low-skill production towards relatively more profitable “skill-intensive” goods. See *IMF Survey*, *supra* note 1, at 56. The *Survey* infers that the alleged threat does not exist from the fact that the prices of domestically produced low-skill goods have not declined. There are at least two possible critiques of this hypothesis. First, even if the basic mechanics of the theorem are correct, the cost-competitiveness of foreign goods might not necessarily lead to the lowering of prices, but might merely allow prices to remain constant over a longer period of time by allowing producers to avoid increasing prices to pay for wage increases, since such wage increases can be avoided. If this is true, stable rather than declining prices could coexist with and indeed would result from relocation of production specific to the advent of lower wages. Second, the hypothesis assumes competitive markets. Yet the *IMF Survey* admits, as has been conceded repeatedly elsewhere, that the “structure of foreign trade has increasingly become intra-industry and intrafirm.” *Id.* at 46. If this is true, then both domestic and foreign goods in any given sector are likely to be produced by the same or affiliated companies. Consequently, in this less competitive environment, a cost differential in foreign labor would not necessarily be passed on to the consumer through lower prices, but rather would be absorbed by the company as greater profit. Given the ever-increasing centrality of “shareholder value” in the contemporary stock market, it seems entirely likely that companies would be induced to move production offshore precisely because of this low-cost differential, and thereby increase dividends on shareholder equity.

<sup>208</sup> See Lusane, *supra* note 158, at 439 (citing a GAO study “which found that African Americans more than whites or Latinos “experience the longest spells of unemployment among displaced workers who eventually found jobs and showed the largest loss in wages in their new jobs”). While Lusane focused on African Americans, Latinas/os also suffer these effects disproportionately to whites.

<sup>209</sup> Lusane cited a study by the *San Jose Mercury* that stated:

Blacks who were 17 percent of the executive branch workforce in 1992 were 39 percent of those dismissed. Whites made up 72 percent of the workforce and only

B. *Housing and Infrastructure.*

The trends described above in employment both affect and are affected by other trends arising from suburbanization, deindustrialization and the emergence of the global city. With respect to housing, the integration of cities into global networks has helped to revitalize cities, but in a way that shuts out poorer urban communities. These communities benefit only tangentially in the high-skill, high-reward aspects of the new "global city." Rather, the global city created a highly compensated class of highly skilled workers together with the class of relatively low-skilled and low-compensated service-sector workers who support both their commercial and residential activity.

The new skilled class has contributed to the renovation of the city, but in ways that are sometimes harmful to poor minority urban communities. Urban gentrification and displacement is a central dynamic to the rise of the global city.<sup>210</sup> The increase in producer-services activity and the associated increased concentration of high-income workers in inner cities has helped to bring about a booming high-price real-estate market. This has led to bidding for space in previously "derelict" or abandoned locations that are centrally located, as well as redevelopment of centrally located properties into high-level office and housing markets.<sup>211</sup> Keith Aoki has observed that this rise in demand among high-income populations for central-city residences was also driven by a shift in tastes that led to a favorable reevaluation of the historical and aesthetic qualities of urban real estate.<sup>212</sup> Aoki has also demonstrated that gentrification and accompanying displacement was facilitated by a rise during the 1980s of a deregulatory approach among government policymakers.<sup>213</sup>

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48 percent of those fired . . . . It's not that [blacks] have less education, experience, and seniority. The difference has nothing to do with job performance . . . . Blacks are fired more often because of their skin color . . . . Rank didn't help. Black senior managers were out the door as often as black clerks. It gets worse. The deck is stacked against fired minority workers with legitimate grounds for reinstatement, the study shows. They win only one in every 100 appeals.

*Id.*

<sup>210</sup> See generally Aoki, *supra* note 3, at 699.

<sup>211</sup> See SASSEN, *supra* note 19, at 186.

<sup>212</sup> See Aoki, *supra* note 3, at 796-97.

<sup>213</sup> See SASSEN, *supra* note 19, at 186.

Cities provide “large-scale, high-cost luxury office and residential complexes,” so that “high-income residential and commercial gentrification” are “[d]istinct socio-spatial forms of the new global city.”<sup>214</sup> In New York, for example, there has been a significant increase in high-paying service-sector jobs. But, as Saskia Sassen has observed, Manhattan “also contains areas that have experienced sharp declines in household incomes: northern Manhattan, containing Harlem and East Harlem, has experienced growing unemployment, sharp increases in poverty, and sharp increases in crime and delinquency rates. There is a ring of poverty that runs through northern Manhattan, the South Bronx, and much of northern Brooklyn.”<sup>215</sup> In these areas, the “low-rent housing market suffered a massive decline in the 1980s that, along with the stagnation and decline in household incomes at the lower end, created a situation that led to severe overcrowding and homelessness.”<sup>216</sup> Sharp inequalities in the distribution of household income in NYC reflect these developments.<sup>217</sup>

Thus, rather than acting to revitalize the city in a relatively evenly-distributed fashion,<sup>218</sup> the rebirth of the city as a global command center operated by highly-skilled service-providers may have further penalized those subsisting at the bottom of a hierarchy defined by race, economic status and geography.

All of these statistics paint a grim portrait of globalization. It is important to explain exactly how this portrait should be understood. Leading institutional advocates of global economic liberalization, such as the International Monetary Fund (“IMF”), have argued that “deindustrialization clearly cannot be regarded as a symptom of the failure of a country’s manufacturing sector, or for that matter, of the economy as a whole. On the contrary, deindustrialization is a natural feature of the process of economic devel-

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<sup>214</sup> *Id.* at 251.

<sup>215</sup> *Id.* at 261.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 264.

<sup>218</sup> *See id.* Sassen wrote:

In its original and richest formulation, the postindustrial model posits a major transformation, one where the expansion of the highly educated work force and the centrality of knowledge industries will lead to an overall increase in the quality of life and a greater concern with social rather than narrowly economic objectives.

*Id.* at 247.

opment in advanced economies.”<sup>219</sup> Moreover, the IMF asserts that the loss of low-skilled labor should not be of concern because “[l]ow-wage imports are simply not that important for most advanced economies.”<sup>220</sup> The implication following from this is that no tears should be shed over the loss of these low-skill jobs to other (poorer) countries.

This proposition is uncontroversial. Low-skill industries are not more inherently valuable than any other sort; nor did urban poor racial minority groups enjoy even remotely ideal conditions prior to globalization. The purpose of this article is to show how, because of existing structural inequalities, preexisting dynamics of socioeconomic hierarchy mean that the adverse impact of globalization-induced economic adjustment is born disproportionately by inner-city minority communities who have been crowded into this low skill work, and who may be crowded into an even less-rewarding replacement.

First, there is disproportionately large underemployment of urban minorities as a result of globalization, because of their disproportionate concentration in low-wage industries. Second, there is the relatively greater difficulty that inner-city minority communities have adjusting to globalization and ultimately benefiting from it. Both difficulties arise in part from the confluence of structural factors explained in Parts I and II. Relatively lower occupational skills mean relatively less ability to transition into higher-skill jobs replacing those lost to globalization. Barriers built on racial, economic and geographical divisions cause low skill levels and hinder minority communities from raising skill levels. There were no “good old days” for these communities; however, the “good new days” that the current Gilded Age has brought to the highly skilled socioeconomic elite are not enjoyed, even proportionately, by those at the bottom of the socioeconomic hierarchy.

The IMF Globalization Survey concedes that “for those workers affected [by deindustrialization], namely, those at the lower end of the income distribution, the effects [of globalization] may . . . be significant.”<sup>221</sup> In the United States, inner-city racial minorities are disproportionately concentrated at this lower end.

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<sup>219</sup> IMF Survey, *supra* note 1, at 51.

<sup>220</sup> *Id.* at 58.

<sup>221</sup> *Id.*



## IV. CONCLUSIONS

The theory behind globalization is that everyone benefits from increased efficiency resulting from the removal of government constraints on the market. This theory, however, does not attempt to address the impact of these dynamics on existing inequalities within a society. It is possible that globalization will offer opportunities for some members of previously disadvantaged groups.<sup>222</sup> It is simultaneously possible that globalization will generally entrench existing structural inequalities, and that some of these inequalities will be racial in character. Such inequities may become particularly apparent when the economy enters its cyclical downturn. Consequently, although measures that promote globalization "are not racial in character or construction, that they have a racial dimension should not be ignored."<sup>223</sup> The need for serious empirical inquiry into this area remains critical, and this article offers only some preliminary, and therefore imperfect, observations.

Again, it is important to emphasize that this critique need not compel advocacy for economic protectionism. Let us assume that global economic integration in fact will deliver the gains promised by liberal economic theory. Even if this is true, then a just government must respond to the dilemma described in this Article by taking the difficult steps to eliminate the barriers that prevent minority communities from participating equitably in the gains of globalization. The IMF Survey suggested precisely this approach:

Rather than attempting to limit globalization, the appropriate policy response is instead *to address the underlying structural rigidities that prevent labor markets from adjusting to technological change or external competition.*<sup>224</sup>

This passage is probably intended to refer to labor "rigidities" such as unionization. Both the text and the underlying logic, however, also encompass the socioeconomic rigidities of race, space and economic place that have pinned inner-city minorities to the bottom of the national socioeconomic hierarchy.

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<sup>222</sup> The most recent U.S. Census contains some indications that some members of minority groups benefited proportionately slightly more from globalization. See *supra* note 172.

<sup>223</sup> Lusane, *supra* note 158, at 439-40 (stating that "multinational trade and investment agreements perpetuate inequalities that already exist within national economies").

<sup>224</sup> IMF Survey, *supra* note 1, at 59.

While this approach may seem sympathetic to classic economic liberalism in that it does not argue against economic liberalization, in fact it raises an important challenge to classic economic liberalism as practiced. A primary criticism of classic economic liberalism is that it assumes a "level playing field," and thus allows and even justifies the persistence of structural inequalities. This Article advocates demanding that structural inequalities be removed. As the debate over affirmative action has shown, as contentious as affirmative action policies have been, they have ultimately proved more politically acceptable than the sorts of reforms that would change the deep-seated inequalities that create the need for affirmative action in the first place, such as entrenched social, economic and geographical segregation between racial groups.<sup>225</sup>

Law and policy have played a role both in shaping these pre-existing inequalities, and in fostering globalization. Adverse effects of globalization on minority communities thus stem in part from conditions created by a complex web of law and policy at the federal, state and local levels. Law and policy makers at all levels bear a responsibility to rectify these conditions, for example, through concerted reforms in housing, education and lending. Without such reform, significant sectors of our society may be left behind in the rush to the end of the rainbow.

Audrey McFarlane has examined and found to be insufficient one tool the federal government recently designed to redress the plight of inner-city communities — the Empowerment Zone and Enterprise Cities Demonstration Program ("Enterprise Zones" Program). The Empowerment Zones Program is designed to revitalize inner-city economies by "providing tax incentives and social service funds within the zone to stimulate business creation and expansion."<sup>226</sup> McFarlane concludes that the limited incentives offered by the program fail "to address the underlying structural reasons for the depressed economic and social conditions existing in the inner-city neighborhoods."<sup>227</sup> McFarlane cites both aspects of the law and policy creating preexisting conditions of vulnerability addressed in Part I, and aspects of the law and policy facilitating

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<sup>225</sup> See Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 304, 352 (1999).

<sup>226</sup> IMF Survey, *supra* note 1, at 296.

<sup>227</sup> McFarlane, *supra* note 225, at 352.

globalization addressed in Part II, as sources of this underlying structural disparity.

The solutions to such deep-rooted structural problems, of course, are not likely to be popular causes among politicians. Advocates for the urban poor must insist, however, on a continuing focus on these difficulties and on real redress for them. Items on this agenda include imperatives that government resources be redistributed and legal processes reshaped to correct the disadvantages in capital formation, infrastructure, and education and other public services that currently operate to reinforce existing hierarchies.

