

1991

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Michael H. Schill, "Deconcentrating the Inner City Poor," 67 Chicago-Kent Law Review 795 (1991).

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DECONCENTRATING THE INNER CITY POOR

MICHAEL H. SCHILL*

On Wednesday, April 29, 1992, low income, predominantly minority residents of several inner city neighborhoods rioted in the streets of Los Angeles following the jury acquittal of police officers who had beaten a young black man. By the time peace was restored to these communities, over 50 people had been killed, 2,383 had been injured and 17,000 had been arrested.¹ Over one thousand buildings had been burnt to the ground during the riots and in excess of three quarters of a billion dollars of property damage had been incurred.²

The Los Angeles riots dramatically and tragically illustrate the precarious situation of many large American cities as we enter the last decade of the twentieth century. Much of the preceding decade was a period of seeming prosperity. Large cities outside of the southwest experienced building booms, burgeoning tax revenues and rapidly increasing budgets. By 1992, these boom years have receded into memory. A national recession, the collapse of the real estate market, cutbacks in federal intergovernmental assistance and the ravages of social problems ranging from the spread of AIDS and homelessness to drug addiction and drug-related violence have silenced those who had, only a few years earlier, heralded the end of the urban crisis.³

Although far from public consciousness during the expansionary

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This paper was prepared for the John M. Olin Foundation Conference on the Law and Economics of Urban Issues, University of Virginia School of Law, November 8-9, 1991.

1. See Victor Merina, *A Story of Refugee Success Ended Tragically in Riots*, L.A. TIMES, Aug. 17, 1992, at A1; Bill Boyarsky, *Understanding the Riots Part 1: The Path to Fury*, L.A. TIMES, May 11, 1992, at T11.

2. Carla Lazzareschi, *Riot Job-Loss Figure is Halved*, L.A. TIMES, May 21, 1992, at D1; see Michael Meyers et al., *Path of Destruction*, L.A. TIMES, May 10, 1992, at A31; Boyarsky, *supra* note 1, at T11.

3. See, e.g., Roy Bahl et al., *The New Anatomy of Urban Fiscal Problems*, in THE FUTURE OF NATIONAL URBAN POLICY 32, 54 (Marshall Kaplan & Franklin James eds., 1990) ("[S]evere urban fiscal crises have not materialized in the 1980s."); Donna E. Shalala & Julia Vitullo-Martin, *Rethinking the Urban Crisis: Proposals for a National Urban Agenda*, 55 AM. PLAN. ASS'N J. 3 (1989) ("It is unlikely that fundamental fiscal crises will hit major cities again.").

years of the 1980s, the problems of persistent inner city poverty grew increasingly virulent. In the shadow of shiny new office buildings and food emporiums, the proportion of central city residents whose incomes were below the officially designated poverty level increased.⁴ Even more disheartening, in many cities the concentration and isolation of the poor has increased.⁵ A disproportionate share of these poor households are composed of racial minorities, particularly blacks.⁶

In this article, I revisit the debate over what legislators and judges can do to alleviate the problem of concentrated inner city poverty. In Part I, I examine the nature of concentrated inner city poverty and some of its consequences. Many social scientists have attributed the growth and persistence of urban poverty to the so-called "spatial mismatch" hypothesis.⁷ This theory posits that poor people living in the inner city are disadvantaged by the location in the suburbs of firms that have traditionally provided low-skilled jobs. Since the bulk of the metropolitan poor population live in the city and cannot move to the suburbs because of discrimination and a lack of affordable housing, the hypothesis suggests that the mismatch between location of residence and employment leads to lower wages and increased unemployment. Concentrated poverty, in turn, generates social problems different in both magnitude and kind from those usually associated with low incomes.

In Part II, I examine the predominant approaches of courts and legislators to the spatial mismatch of jobs and residences and the problems of concentrated poverty. In response to the Los Angeles riots, politicians of both political parties embraced enrichment strategies that would increase employment and educational opportunities for poor households by increasing resources for inner city communities and providing incentives for job creation. Some have referred to enrichment programs as a jobs-to-people strategy. A second approach, deconcentration, is a mirror image of enrichment. Deconcentration advocates seek to facilitate the movement of poor households to locations where educational and employment opportunities are greater than the central city. Instead of bringing jobs to people, deconcentration policies seek to bring people to

4. See Paul E. Peterson, *The Urban Underclass and the Poverty Paradox*, in *THE URBAN UNDERCLASS* 3, 7 (Christopher Jencks & Paul E. Peterson eds., 1991) (noting the proportion of households below the poverty line in central cities increased from 9.8% in 1970 to 14.0% in 1980 to 15.4% in 1987).

5. See *infra* text accompanying notes 10-19.

6. See *infra* text accompanying notes 18-19.

7. The first article to attempt to demonstrate the empirical validity of the spatial mismatch hypothesis was John F. Kain, *Housing Segregation, Negro Employment and Metropolitan Decentralization*, 82 Q.J. ECON. 175 (1968).

jobs. Although deconcentration is by no means unproblematic, I conclude that a strategy geared to facilitate the movement of poor households from inner cities to suburbs offers more hope of improving their lives than enrichment approaches.

In Part III of this article, I examine how the law facilitates or impedes efforts to deconcentrate the inner city poor. With the exception of the Fair Housing Act,⁸ federal law does little to promote deconcentration and in some instances, actually acts as a roadblock. Some state courts and legislators seem more willing and able to promote deconcentration, although their efforts, to date, have borne little fruit. Interestingly, one area where state courts and legislators have acted most actively and, perhaps, most effectively to promote deconcentration appears at first glance to promote enrichment instead. Recent court cases requiring states to equalize educational resources among school districts may not only take away some of the incentives of suburbs to zone poor people out, but they may also increase the incentives for poor people to move out of the central city.

I. CONCENTRATED GHETTO POVERTY

After a period of relative disinterest, issues of urban poverty are once again finding their way onto the agendas of academics and policy-makers.⁹ Among the demographic and spatial trends of most concern in the nation's largest cities is the increasing concentration of poor people in certain inner city neighborhoods. Concentrated ghetto poverty is caused by several forces including race discrimination and the transformation of the urban economy. Large central cities have lost much of their industrial and manufacturing employment bases to the suburbs. Low-skilled jobs in this sector have been replaced by jobs requiring higher levels of education than possessed by many residents of inner city neighborhoods. Housing discrimination, inadequate transportation and the lack of affordable housing in suburban locations have made it impossible for the inner city poor to move to areas of greater opportunity resulting in a spatial mismatch of jobs and residences.

Concentrated ghetto poverty generates social problems that are more severe and in some ways different from the ordinary problems fac-

8. 42 U.S.C. §§ 3601-3631 (1988).

9. Much of the credit for this renewed interest in urban affairs is attributable to the publication in 1987 of a book by Wilson examining the growing problems of inner city blacks. See WILIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987). For a discussion of Wilson's hypotheses see *infra* text accompanying notes 47-53.

ing poor people. Among these "concentration effects" are persistent joblessness and high levels of teenage pregnancy, school dropouts, drug abuse and crime.

A. *The Growth of Concentrated Ghetto Poverty*

Despite using different methodologies to examine inner city poverty, social scientists are in agreement that concentrated ghetto poverty has grown in recent years. Jargowsky and Bane find that from 1970 to 1980, the number of people with incomes below the poverty level living in census tracts where over 40% of the population are poor increased 29.5% from 1.9 million to 2.4 million.¹⁰ Similarly, recent articles by Hughes¹¹ and Weicher¹² demonstrate that the number of poverty census tracts increased substantially between 1970 and 1980.¹³ Nathan and Adams further show that the increase in concentrated ghetto poverty did not abate in the 1980s. They find that the proportion of central city poor living in neighborhoods where 20% or more of the residents had incomes below the poverty level increased dramatically from 39.9% in 1980 to 56.8% in 1986.¹⁴

Each of these studies' findings of increased numbers of ghetto poor and poverty levels in recent years masks considerable regional and racial differences. Jargowsky and Bane report that the ten metropolitan areas that have the highest concentration of ghetto poor account for almost one-half of the national total.¹⁵ Ghetto poverty increased "dramatically" in large northern cities and decreased "equally dramatically" in many cities located in the South.¹⁶ Hughes confirms the regional nature of concentrated ghetto poverty by showing that the cities with the greatest

10. See Paul A. Jargowsky & Mary J. Bane, *Ghetto Poverty in the United States, 1970-1980*, in THE URBAN UNDERCLASS 235, 253 (Christopher Jencks & Paul E. Peterson eds., 1991).

11. See Mark A. Hughes, *Misspeaking Truth to Power: A Geographical Perspective on the "Underclass" Fallacy*, 65 ECON. GEOGRAPHY 187, 194 (1989).

12. See John C. Weicher, *How Poverty Neighborhoods Are Changing*, in INNER-CITY POVERTY IN THE UNITED STATES 68, 70 (Laurence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990).

13. Hughes and Weicher use different criteria for classifying census tracts that contain concentrated poverty. Hughes defines an impacted ghetto census tract as one whose percentage of (1) families with children headed by females, (2) males who worked less than 26 weeks during the previous year, (3) households receiving public assistance and (4) older teenagers not in high school and not holding high school diplomas exceeds twice the median level of the surrounding metropolitan area. See Hughes, *supra* note 11, at 193. Weicher characterizes a census tract as a poverty tract if 20% or more of its residents have incomes below the poverty line. See Weicher, *supra* note 12, at 69.

14. See Richard P. Nathan & Charles F. Adams, Jr., *Four Perspectives on Urban Hardship*, 104 POL. SCI. Q. 483, 503 (1989). Nathan and Adams estimate that the number of central city poor living in 20% poverty areas increased from 884,000 in 1980 to 1,614,000 in 1986. *Id.*

15. See Jargowsky & Bane, *supra* note 10, at 254.

16. See *id.* at 269.

number of impacted ghetto tracts were, in decreasing order, Philadelphia, Detroit, Chicago, Baltimore, Cleveland and Washington, D.C.¹⁷

Concentrated ghetto poverty is a condition that affects black households with much greater frequency than those who are white. According to Nathan and Adams, in 1986, 75.5% of all poor black households in central cities lived in census tracts where over 20% of the population was poor compared to 43.3% of all poor urban white households.¹⁸ Jargowsky and Bane find that in 1980, "65% of the ghetto poor were black, 22% Hispanic and 13% non-Hispanic white and other races."¹⁹

B. Concentrated Ghetto Poverty and the Spatial Mismatch Hypothesis

The spatial mismatch hypothesis suggests that the increase in concentrated inner city poverty is partially attributable to the lack of correspondence between the places poor people live and the location of job opportunities.²⁰ Over the past three decades, central cities have experienced an exodus of low-skilled jobs to the suburbs, other regions and overseas. The spatial mismatch hypothesis holds that these jobs are inaccessible to the inner city poor because high housing costs and housing discrimination make it impossible for these households to move nearby. Public transportation networks are insufficient to transport the poor from their inner city locations to workplaces in the suburbs. Proponents of the spatial mismatch hypothesis also argue that potential employees

17. See Hughes, *supra* note 11, at 194. As a proportion of all census tracts in the metropolitan area, the cities with the most impacted ghetto tracts were Philadelphia, Detroit, Baltimore, Cleveland, Atlanta and Toledo. *Id.*

18. See Nathan & Adams, *supra* note 14, at 504.

19. See Jargowsky & Bane, *supra* note 10, at 252.

20. I do not mean to suggest that the spatial mismatch between jobs and residences provides a complete explanation for persistent inner city poverty. Racial discrimination limits the opportunities of minorities, regardless of whether they live in central cities or suburbs. See David T. Ellwood, *The Spatial Mismatch Hypothesis: Are There Teenage Jobs Missing in the Ghetto?*, in THE BLACK YOUTH EMPLOYMENT CRISIS 147, 149 (Richard B. Freeman & Harry J. Holzer eds., 1986). Furthermore, commentators such as Charles Murray have suggested that social welfare programs designed to help the poor have been the major cause of increased poverty by reducing incentives for individuals to work and encouraging them to engage in activities that limit their future employment prospects. See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980*, at 154-66 (1984). Although current levels of public assistance do affect work incentives, see Sheldon Danziger et al., *How Income Transfer Programs Affect Work, Savings and the Income Distribution: A Critical Review*, 19 J. ECON. LIT. 975, 1019 (1981) (Current programs reduce the aggregate labor supply by less than 4.8%.); Irwin Garfinkel & Larry L. Orr, *Welfare Policy and the Employment Rate of AFDC Mothers*, 27 NAT'L TAX J. 275, 282-83 (1974) (indicating AFDC levels have a significant effect on employment rates), Murray's thesis linking increased levels of poverty to social welfare programs has been roundly criticized as contrary to the facts. See, e.g., Sheldon Danziger & Peter Gottschalk, *The Poverty of Losing Ground*, CHALLENGE, May-June 1985, at 32; David T. Ellwood & Lawrence H. Summers, *Is Welfare Really the Problem?*, PUB. INTEREST, Spring 1986, at 56; Robert Greenstein, *Losing Faith in "Losing Ground"*, NEW REPUBLIC, Mar. 25, 1985, at 12; Christopher Jencks, *How Poor Are The Poor?*, N.Y. REV. BOOKS, May 9, 1985, at 41.

living in the central city are at a disadvantage in learning about the existence of jobs in the suburbs.

The spatial mismatch hypothesis has been subjected to a substantial amount of empirical research. Although the results of these tests are not all consistent, the weight of the evidence supports the argument that the location of inner city poor households, especially black households living in the older cities of the North and Midwest, creates a disadvantage for them in escaping poverty.²¹ One set of studies conducted by Kasarda examines the changing structure of employment in six metropolitan areas: Boston, Chicago, Cleveland, Detroit, New York and Philadelphia. These studies show that the spatial pattern of job creation and loss follows a consistent pattern. From 1970 to 1980, the central cities of each of these metropolitan areas lost large numbers of jobs in the occupational categories of clerical, sales and blue-collar employment. The largest share of jobs lost in each city were those involved in manufacturing and the production of goods.²² In their place, a substantial number of managerial, professional and technical jobs were created. In contrast, the suburbs of each of these central cities added large numbers of jobs in almost all occupational categories.²³

The economic transformation of these central cities from centers of manufacturing and production to centers of information exchange and finance has had a profoundly negative effect on lower income households. Most of these potential employees have achieved no more than a high school education; in fact, a large proportion have dropped out of high school prior to graduation.²⁴ Nevertheless, the qualifications for entry

21. See, e.g., EDWIN S. MILLS & BRUCE W. HAMILTON, *URBAN ECONOMICS* 393 (4th ed. 1989) (The "most plausible" explanation for the deteriorating labor market condition of central city blacks is the spatial mismatch hypothesis.); Harry J. Holzer, *The Spatial Mismatch Hypothesis: What Has the Evidence Shown?*, 28 *URB. STUD.* 105 (1991) ("It seems fair to say, therefore, that the preponderance of evidence from data of the last decade shows that spatial mismatch has a significant effect on black employment."). But see Christopher Jencks & Susan E. Mayer, *Residential Segregation, Job Proximity, and Black Job Opportunities, in INNER-CITY POVERTY IN THE UNITED STATES*, 187, 218 (Laurence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990) (The findings of empirical studies on the spatial mismatch hypothesis "tell a very mixed story.").

22. See John D. Kasarda, *Urban Industrial Transition and the Underclass*, 501 *ANNALS AM. ACAD. POL. & SOC. SCI.* 26, 29 (1989) [hereinafter *Urban Industrial Transition*]; see also Keith R. Ihlanfeldt & David L. Sjoquist, *The Impact of Job Decentralization on the Economic Welfare of Central City Blacks*, 26 *J. URB. ECON.* 110, 113 (1989) (From 1970 to 1980, the central city shares of unskilled jobs fell in each of the nation's ten largest metropolitan areas except Los Angeles.).

23. See Kasarda, *Urban Industrial Transition*, *supra* note 22, at 29-30; see also Jonathan S. Leonard, *The Interaction of Residential Segregation and Employment Discrimination*, 21 *J. URB. ECON.* 323, 343-44 (1987) (From 1974 to 1980, blue-collar employment in the Chicago metropolitan region fell 4% in the ghetto, 2% in the zone 5 miles away from the ghetto and increased 2% outside this 5 mile zone.).

24. See, e.g., Jargowsky & Bane, *supra* note 10, at 249 (In 1980, the median number of school years completed by ghetto blacks in Memphis and Philadelphia were 9.5 and 10.8, respectively.);

level jobs in close proximity to their residences have increased substantially often including a college degree.²⁵ The traditional stepping-stone of the urban working class, manufacturing jobs, are now located in the suburbs,²⁶ out of the reach of large numbers of inner city households who do not own cars.²⁷ Public transportation is generally geared to moving people from the suburbs to employment centers in the cities. Given the dispersed nature of jobs in the suburbs, existing public transportation is inadequate to enable many inner city residents to reach jobs for which they are qualified.²⁸

A second set of studies providing support for the spatial mismatch hypothesis examines the effect of inner city residence on employment and earnings. Kain's 1968 study was the first to test whether the spatial mismatch of jobs and residences reduces the employment of inner city residents.²⁹ Kain examines data from Chicago and Detroit and finds that the black share of employment was significantly higher in black neighborhoods close to the major ghettos than in neighborhoods farther away.³⁰ He concludes that blacks probably suffer a significant job loss as a result of residential segregation.³¹

A 1986 study by Ellwood calls into question Kain's conclusions that

Frank Newman et al., *Reengaging State and Federal Policymakers in the Problems of Urban Education, in THE FUTURE OF NATIONAL URBAN POLICY* 61, 68 (Marshall Kaplan & Franklin James eds., 1990) (Overall drop-out rate in Chicago public schools for the Class of 1982 is 43%).

25. See John D. Kasarda, *Structural Factors Affecting the Location and Timing of Urban Underclass Growth*, 11 *URB. GEOGRAPHY* 234, 247 (1990) [hereinafter *Urban Underclass Growth*]; Kasarda, *Urban Industrial Transition*, *supra* note 22, at 33.

26. In addition to locating in the suburbs, manufacturing firms have frequently moved to other regions of the nation or abroad. See John D. Kasarda, *Jobs, Migration, and Emerging Urban Mismatches*, in *URBAN CHANGE AND POVERTY* 148, 158-68 (Michael G.H. McGeary & Laurence E. Lynn, Jr. eds., 1988) (describing regional patterns of employment growth and decline).

27. See Kasarda, *Urban Underclass Growth*, *supra* note 25, at 253-54 (proportions of unemployed black males living in households with no private vehicle in New York, Philadelphia and Chicago in 1980 were 72%, 54% and 45%, respectively).

28. See Ihlanfeldt & Sjoquist, *supra* note 22, at 125 ("[P]ublic transit, even where it exists, does not serve the reverse commuter."); John D. Kasarda, *Urban Change and Minority Opportunities*, in *THE NEW URBAN REALITY* 33, 55 (Paul E. Peterson ed., 1985).

29. See Kain, *supra* note 7.

30. See *id.* at 183-89.

31. See *id.* at 196. Kain attributes the reduced black employment share in neighborhoods distant from the ghetto to several possible factors: (1) high commutation costs discourage blacks from seeking those jobs; (2) blacks lack information about distant jobs; (3) employers outside of the ghetto discriminate against blacks out of a fear that white customers will retaliate against them; and (4) employers in the ghetto discriminate in favor of blacks. See *id.* at 179-80. Kain's methodology has been subjected to intense scrutiny and some criticism. See, e.g., Jencks & Mayer, *supra* note 21, at 187-92; Paul Offner & Daniel H. Saks, *A Note on John Kain's "Housing Segregation, Negro Employment, and Metropolitan Decentralization,"* 85 *Q.J. ECON.* 147, 148 (1971). In a recent article, Kain reviews the empirical literature testing the spatial mismatch hypothesis and concludes, for the most part, that it supports his original contentions. See John F. Kain, *The Spatial Mismatch Hypothesis: Three Decades Later*, 3 *HOUSING POLICY DEBATE* 371 (1992).

residential location is a major factor in explaining ghetto poverty. Ellwood examines youth unemployment in Chicago using data from 1970 and finds that the greater distance between places of residence and jobs for black teenagers explains only a small proportion of the blacks' poor labor market outcomes as compared to white youths.³² Ellwood also finds that black unemployment rates were similar in two Chicago neighborhoods, with widely varying levels of employment opportunities.³³ He concludes, based upon these findings, that in explaining the unemployment differentials between whites and blacks, "[r]ace, not space, remains the key explanatory variable. . . ."³⁴

Ellwood's conclusion that location does not explain much of the employment problem of black youths has come under significant criticism.³⁵ Several economists using more recent data have found that the residential location of the ghetto poor reduces their likelihood of being employed.³⁶ Ihlanfeldt and Sjoquist's examination of 1980 data on youth employment in Chicago, Los Angeles and Philadelphia shows that proximity to employment has a strong effect on the probability that young men and women will have a job. Proximity to employment explained between one-third and one-half of the racial gap in unemployment rates between blacks and whites in the sample.³⁷ Using 1974 and 1980 employment data for Chicago and Los Angeles, Leonard reaches the conclusion that in both cities the black share of employment drops

32. See Ellwood, *supra* note 20, at 164; see also Mark A. Hughes & Janice F. Madden, *Residential Segregation and the Economic Status of Black Workers: New Evidence for an Old Debate*, 29 J. URB. ECON. 28, 30 (1991) ("[W]e find no evidence that residential locations of blacks provide substantial barriers to access to jobs.").

33. See Ellwood, *supra* note 20, at 177-80.

34. *Id.* at 149.

35. For methodological criticisms of Ellwood's study, see, e.g., Keith R. Ihlanfeldt & David L. Sjoquist, *Job Accessibility and Racial Differences in Youth Employment Rates*, 80 AM. ECON. REV. 267, 274 (1990); Kasarda, *Urban Industrial Transition*, *supra* note 22, at 38-39; Jonathan S. Leonard, *Comment*, in THE BLACK YOUTH EMPLOYMENT CRISIS 185, 186-89 (Richard B. Freeman & Harry J. Holzer eds., 1986); William J. Wilson, *Public Policy Research and "The Truly Disadvantaged"*, in THE URBAN UNDERCLASS 460, 465 (Christopher Jencks & Paul E. Peterson eds., 1991) [hereinafter *Public Policy Research*].

36. Ellwood has stated that recent demographic changes lead him to believe that inner city residential location is an important factor in explaining ghetto poverty. See Roberto Suro, *Where Have All the Jobs Gone? Follow the Crab Grass*, N.Y. TIMES, Mar. 3, 1991, at E5 (Ellwood quoted as saying: "I am starting to see some real disadvantages coming from the movement of jobs to the suburbs. There is no question that in the 1980's it aggravated the problems of the poor."). However, a recent study by Weicher finds little support for the spatial mismatch hypothesis. Weicher finds that from 1960 to 1980 suburbanization of employment had no effect on poverty tract unemployment rates although it did have a small effect on the probability that residents of poverty tracts would drop out of the labor force. See Weicher, *supra* note 12, at 100-01.

37. See Ihlanfeldt & Sjoquist, *supra* note 35, at 268. According to the study, if a black youth in Philadelphia moved from the least accessible area in the metropolitan area to the most accessible area she would improve her chances of employment by 14.4% to 22.3%. See *id.* at 271.

“dramatically” as distance from the ghetto increases.³⁸ He concludes that “a more plausible [explanation] is that residential segregation has limited employment opportunities for blacks.”³⁹

Another method economists have used to test the spatial mismatch hypothesis is to examine whether inner city residents earn lower incomes than similarly situated households living in other locations. In their analysis of 1978 data from the Current Population Survey, Price and Mills estimate that blacks who live in central cities experience a 6% wage penalty attributable to their residential location.⁴⁰ They characterize this effect of residential location on earnings as “small.”⁴¹ Other studies, however, find central city residence poses more of a disadvantage in terms of earnings. For example, Ihlanfeldt and Sjoquist find that the fraction of a metropolitan area’s low-skilled jobs located in its suburbs is significantly related to lower earnings for males of both races and white females who live in central cities.⁴² Although the magnitude of the penalty is similar for whites and blacks, the authors conclude that blacks, as a group, are especially harmed since their residences are more concentrated in the central city.⁴³ Additional studies by Straszheim,⁴⁴ and Vrooman and Greenfield⁴⁵ reach similar conclusions that inner city resi-

38. See Leonard, *supra* note 23, at 336.

39. *Id.* at 339. See also Katherine M. O’Regan & John M. Quigley, *Labor Market Access and Labor Market Outcomes For Urban Youth*, 21 REGIONAL SCI. & URB. ECON. 277, 290 (1991) (For black center city youths, higher levels of employment concentration in the suburbs are significant in explaining increased unemployment.). A recent study of female-headed households provided housing vouchers pursuant to the *Gautreaux* litigation finds that women moving to the suburbs were 14% more likely than similarly situated women moving within the city of Chicago to find employment. See James E. Rosenbaum & Susan J. Popkin, *Employment and Earnings of Low-Income Blacks Who Move to Middle-Class Suburbs*, in THE URBAN UNDERCLASS 342, 350 (Christopher Jencks & Paul E. Peterson eds., 1991). For more discussion of this study see *infra* text accompanying notes 122-37.

40. See Richard Price & Edwin S. Mills, *Race and Residence in Earnings Determination*, 17 J. URB. ECON. 1, 16 (1987). Price and Mills find that the wage penalty for being black is much larger—15%. See *id.*

41. *Id.* at 17. In the most recent edition of his urban economics textbook, one of the authors, however, expresses the view that the spatial mismatch of jobs and residences for inner city blacks is an important cause of their difficulties in the labor market. See MILLS & HAMILTON, *supra* note 21, at 393-96.

42. See Ihlanfeldt & Sjoquist, *supra* note 22, at 119-20. According to the study, for males, a one percent increase in the fraction of low-skilled jobs located in the suburbs decreases annual earnings by \$55. See *id.* at 120. Ihlanfeldt and Sjoquist also note that high levels of employment decentralization may lead to lower housing prices thereby offsetting some of the wage penalty. Their estimates indicate that this offset would be relatively small. See *id.* at 128.

43. See *id.* at 127.

44. See Mahlon R. Straszheim, *Discrimination and the Spatial Characteristics of the Urban Labor Market for Black Workers*, 7 J. URB. ECON. 119, 138 (1980) (1965 data show that, unlike whites, low-skilled blacks earn more in suburbs than they do in central cities suggesting an excess supply of labor in cities.).

45. See John Vrooman & Stuart Greenfield, *Are Blacks Making It in the Suburbs? Some New Evidence on Intrametropolitan Spatial Segmentation*, 7 J. URB. ECON. 155, 165 (1980) (1973-74 sur-

dence generates significant wage penalties for black employees.

C. *The Effects of Living In Concentrated Ghetto Poverty*

The weight of the evidence, therefore, supports the hypothesis that a mismatch between the location of residences and employment has contributed to the increase in ghetto poverty over the past two decades. The concentration of ghetto poverty has also been exacerbated by the exodus of nonpoor households from these communities. Working and middle class households left ghetto neighborhoods at a quicker pace than the poor leaving behind communities even more socially isolated than before.⁴⁶

In his book, *The Truly Disadvantaged*,⁴⁷ and several recent articles,⁴⁸ Wilson argues that concentrated ghetto poverty generates a wide array of social problems that are often different in magnitude and kind from the problems poor people face in less isolated environments.⁴⁹ According to Wilson, a poor individual is more likely to have weak labor force attachment if he grows up and lives in an environment that lacks employed role-models and where the people he comes into contact with are similarly poor and unskilled. The absence of regular employment as

vey suggests that dispersing black males to the suburbs has the potential of reducing the earnings gap between black and white males by 40%.); see also Clifford E. Reid, *Are Blacks Making It in the Suburbs?: A Correction*, 16 J. URB. ECON. 357, 357-58 (1984) (Error correction in earlier piece by Vrooman & Greenfield shows that "central-city black males and black females suffer an occupation and earnings disadvantage relative to their hypothetical suburban ring counterparts.") (emphasis in original); Keith R. Ihlanfeldt, *Intra-Metropolitan Variation in Earnings and Labor Market Discrimination: An Econometric Analysis of the Atlanta Labor Market*, 55 S. ECON. J. 123, 132-35 (1988) (According to the 1980 census, wages for service jobs were higher outside the central city.). But see Rosenbaum & Popkin, *supra* note 39, at 350-51 (After controlling for other factors, Gautreaux demonstration participants who moved to the suburbs did not earn higher hourly wages than movers within the city.).

46. See Jargowsky & Bane, *supra* note 10, at 266; Kathryn P. Nelson, *Racial Segregation, Mobility, and Poverty Concentration* (Mar. 22, 1991) (unpublished paper presented to the Annual Meeting of the Population Association of America in Washington, D.C., on file with the *Chicago-Kent Law Review*). Although ghetto neighborhoods existing in 1970 lost population over the succeeding decade, the aggregate level of concentrated ghetto poverty increased because the ghetto expanded into contiguous tracts. See Jargowsky & Bane, *supra* note 10, at 266.

47. WILSON, *supra* note 9.

48. See, e.g., Loic J.D. Wacquant & William J. Wilson, *The Cost of Racial and Class Exclusion in the Inner City*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 8 (1989); Wilson, *Public Policy Research*, *supra* note 35; William J. Wilson, *Studying Inner-City Social Dislocations: The Challenge of Public Agenda Research*, 56 AM. SOC. REV. 1 (1991) [hereinafter *Inner-City Social Dislocations*].

49. The negative effects of geographic concentration on poor people were also observed by some perceptive academics and policymakers decades ago. See, e.g., CHARLES M. HAAR & DEMETRIUS S. IATRIDIS, *HOUSING THE POOR IN SUBURBIA: PUBLIC POLICY AT THE GRASS ROOTS* 15 (1974) ("[I]t is almost impossible to deal effectively with the accumulated ill effects of deprivation and deep-rooted poverty when the victims are concentrated geographically. The resultant social and psychological demoralization often becomes self-reinforcing and produces a feedback reaction that hardly can be controlled, let alone eliminated.").

an anchor leaves the rest of the person's life "incoherent" and reduces his perceived "self-efficacy."⁵⁰ Lacking employment opportunities, ghetto residents frequently turn to deviant or illegal activities to earn income, thereby further weakening their attachment to the labor market and middle class norms.⁵¹ These feelings, beliefs and behaviors are then reinforced by people in the community who share similar views. The "concentration effects"⁵² generated by living in ghetto poverty lead Wilson to conclude, "[t]he issue is not simply that the underclass or ghetto poor have a marginal position in the labor market similar to that of other disadvantaged groups, it is also that their economic position is uniquely reinforced by their social milieu."⁵³ Concentration effects may feed upon themselves; as communities become increasingly populated by unskilled residents who engage in deviant or illegal behaviors, firms may relocate elsewhere so as to gain access to a more appropriate pool of labor and escape negative externalities.⁵⁴

Recent sociological evidence seems to provide some support for Wilson's hypothesis that residence in a concentrated poverty neighborhood has an effect on poor people independent from the effect of their own low personal income.⁵⁵ Most social scientists agree that high rates of teenage pregnancy among the ghetto poor generate or exacerbate social problems ranging from dropping out of school and unemployment to low birth weights and other medical complications.⁵⁶ Several studies indicate that

50. See Wilson, *Inner-City Social Dislocations*, *supra* note 48, at 10-11. In addition, social isolation may deprive inner city residents of information about the existence of employment opportunities. See O'Regan & Quigley, *supra* note 39, at 290 (Higher social isolation is significant in explaining unemployment among black youths.).

51. See Wilson, *Public Policy Research*, *supra* note 35, at 472.

52. See Wilson, *Inner-City Social Dislocations*, *supra* note 48, at 11.

53. *Id.* at 12.

54. See Kasarda, *Urban Underclass Growth*, *supra* note 25, at 259. Thus the relationship between the spatial mismatch of jobs and residences and the problems of concentrated inner city poverty is *not* uni-directional, but interactive.

55. Earlier research, primarily studies examining the effect of mean school socio-economic or racial status on drop-out rates and achievement levels of poor and minority students, demonstrated conflicting results. See Christopher Jencks & Susan E. Mayer, *The Social Consequences of Growing Up in a Poor Neighborhood*, in *INNER-CITY POVERTY IN THE UNITED STATES* 111, 173-75 (Laurence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990). The authors speculate that better data would support the conclusion that advantaged classmates encourage both poor and rich students to learn more in elementary school, complete high school and delay sexual intercourse. See *id.* at 177. Most research with respect to the concentration effects hypothesis examines black youths. Recent studies indicate that certain of the negative effects of concentrated poverty are also experienced by some elements of the nation's Hispanic population, particularly in northern and midwestern cities. See Joan Moore, *Is There a Hispanic Underclass?*, 70 *Soc. Sci. Q.* 265, 271-75 (1989).

56. See, e.g., MARIAN W. EDELMAN, *FAMILIES IN PERIL: AN AGENDA FOR SOCIAL CHANGE* 51-57 (1987); NATIONAL RESEARCH COUNCIL, *A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY* 526 (Gerald D. Jaynes & Robin M. Williams, Jr. eds., 1989); Dennis P. Hogan and Evelyn Kitagawa, *The Impact of Social Status, Family Structure and Neighborhood on the Fertility of Black*

the concentration effects of ghetto poverty contribute to the high rates of teenage pregnancy among inner city residents.⁵⁷ Anderson's ethnographic account of black teenagers in the ghetto describes a community of limited hope and opportunity. The street culture supports early sexual activity, drug use and other forms of delinquency.⁵⁸ Teenagers, many of whom are cut off from the world of the middle class and middle class-oriented paths of mobility, seek to gain status from their peer groups. For young males, sexual conquest brings pride and admiration.⁵⁹ For young women, the street culture "presents early sexual experience and promiscuity as a virtue. For many such girls who have few other perceivable options, motherhood, accidental or otherwise, becomes a right of passage to adulthood."⁶⁰ Teenagers who do not become pregnant are frequently denigrated by other young people in the neighborhood.⁶¹ Anderson concludes that for young women who walk the "social tightrope" between "decency" and social acceptability, "proximity to and degree of integration with certain peer groups can be a significant factor in the chances of a young woman's becoming pregnant. . . ." ⁶²

Anderson's observation that concentrated ghetto poverty influences teenage pregnancy is supported by Crane's investigation of the relationship between community socioeconomic status and the likelihood that a teenager would become pregnant.⁶³ He finds that a drop in the proportion of people employed in a neighborhood in professional or managerial jobs is associated with large and non-linear increases in the probability

Adolescents, 90 AM. J. SOC. 825, 828-29 (1985). *But cf.* Regina Austin, *Sapphire Bound*, 1989 Wis. L. REV. 539, 572-73 (1989) (arguing against negative stereotype of unwed, black mothers).

57. Murray, however, contends that the increased number of unmarried mothers is attributable to incentives built into social welfare programs. *See* MURRAY, *supra* note 20, at 161-62. Social scientists, however, have cast doubt on Murray's thesis by showing that variations in public assistance levels across states and over time within states have had little or no effect on the prevalence of unmarried mothers. *See, e.g.*, Mary J. Bane & David T. Ellwood, *The Impact of AFDC On Family Structure and Living Arrangements*, 7 RESEARCH LAB. ECON. 137, 142 (1985); Greg J. Duncan & Saul D. Hoffman, *Welfare Benefits, Economic Opportunities, and Out-of-Wedlock Births Among Black Teenage Girls*, 27 DEMOGRAPHY 519, 530 (1990); Ellwood & Summers, *supra* note 20, at 68-69; Greenstein, *supra* note 20, at 16; Sara McLanahan et al., *Family Structure, Poverty, and the Underclass*, in URBAN CHANGE AND POVERTY 102, 105-09 (Michael G.H. McGeary & Laurence E. Lynn, Jr. eds., 1988).

58. *See* Elijah Anderson, *Neighborhood Effects on Teenage Pregnancy*, in THE URBAN UNDERCLASS 375, 375 (Christopher Jencks & Paul E. Peterson eds., 1991).

59. *See* Elijah Anderson, *Sex Codes and Family Life Among Poor Inner-City Youths*, 59 ANNUALS AM. ACAD. POL. & SOC. SCI. 61-62 (1989).

60. *See* Anderson, *supra* note 58, at 380, 383. According to Anderson, many of these communities are so devoid of working or middle class role models, that the pregnant single mother, in effect, becomes their role model. *See id.* at 389.

61. *See id.* at 391.

62. *Id.* at 388.

63. *See* Jonathan Crane, *The Epidemic Theory of Ghettos and Neighborhood Effects on Dropping Out and Teenage Childbearing*, 96 AM. J. SOC. 1226 (1991).

that black teenage female residents would become pregnant. As the proportion of people in her neighborhood employed in high status occupations drops from 31.2% to 6.0%, the probability of a black teenager living in a large city becoming pregnant increases from 7% to 12%.⁶⁴ A further drop in the proportion of residents employed as professionals or managers to 3.5% causes the probability of having a child to jump from 12% to 20%.⁶⁵ Crane's finding that the rate of teenage pregnancy increases at an increasing rate as high status jobs decrease supports Wilson's hypothesis that concentration of ghetto poverty has an independently negative effect on social outcomes.⁶⁶

A further test of the concentration effects hypothesis by Crane examines drop-out rates for high school students. Crane finds similar large and non-linear changes in drop-out rates as the proportion of high status jobs among community residents decreases. For a black child, as the proportion of people employed as professionals or managers in one's neighborhoods drops from 20.7% to 5.6% and 3.6%, the likelihood that he or she will drop out of school jumps from 11% to 12% and 19%, respectively.⁶⁷ Mayer's study of the relationship between high school socioeconomic composition and the probability that students in grades 10 to 12 will drop out adds further support to the concentration effects hypothesis. She finds that students who attend schools with a student body composed of children who have high socioeconomic status have significantly lower drop-out rates than students of similar races and backgrounds who attend lower status schools.⁶⁸

64. See *id.* at 1240.

65. *Id.* For black teenagers in all locations the probability of becoming pregnant increased from 8% to 12% to 16%. Crane also found that neighborhood effects also increased the probability of a white teenager having a child. See *id.* at 1239.

66. "The nonlinear results suggest that neighborhood effects were a product of social interaction, that the whole was greater than the sum of its parts, at least in the worst neighborhoods." *Id.* at 1241. See also Susan E. Mayer, *How Much Does a High School's Racial and Socioeconomic Mix Affect Graduation and Teenage Fertility Rates*, in *THE URBAN UNDERCLASS* 321, 327 (Christopher Jencks & Paul E. Peterson eds., 1991) (Students who attend high socioeconomic status schools are less likely to have a child than students of the same race and socioeconomic background who attend lower status schools.).

67. See Crane, *supra* note 63, at 1236. "[T]he neighborhood effect among the very worst neighborhoods is more than 50 times greater than the effect in the middle." *Id.* Although smaller in magnitude, the probability of dropping out for whites also increased in a non-linear fashion. See *id.* at 1237.

68. See Mayer, *supra* note 66, at 327. A recent examination of households in Boston also supports the existence of neighborhood effects. See Paul Osterman, *Welfare Participation in a Full Employment Economy: The Impact of Neighborhood*, 38 *SOC. PROB.* 475 (1991). The author of this study found that after controlling for individual attributes, as the proportion of a neighborhood's population with jobs decreases, the likelihood that an individual will receive public assistance increases. *Id.* at 486.

II. DECONCENTRATING THE GHETTO POOR

Since Kain sparked the debate over the spatial mismatch hypothesis in 1968, academics, lawyers and policymakers have proposed numerous strategies to alleviate the problem of concentrated ghetto poverty. One set of proposals advocates bringing jobs closer to people by promoting ghetto economic development. Another approach favors bringing people closer to jobs either by dispersing ghetto populations or facilitating their access through improved transportation and information networks. In this part, I briefly examine ghetto enrichment and conclude that it is unlikely to be effective in alleviating the spatial mismatch of people and jobs. I then examine, in greater detail, some of the opportunities and pitfalls of deconcentration. Despite reservations over its political expediency and economic efficiency, I conclude that deconcentration efforts offer the best hope of effectively improving the spatial mismatch of jobs and residences as well as alleviating the social problems attributable to concentrated inner city poverty.

A. *Ghetto Enrichment*

Advocates of ghetto enrichment promote public sector efforts to alleviate the spatial mismatch of jobs and residences by supporting economic development in inner city communities. Federal, state and local governments have used a number of different mechanisms over the past four decades to stimulate inner city economic growth. Indeed, the response of politicians of both major political parties to the recent riots in Los Angeles has been to encourage the adoption of enrichment strategies such as enterprise zones and low income home ownership.⁶⁹ Nevertheless, much doubt remains over whether public sector efforts to promote economic development are feasible and efficient. One of the earliest strategies is subsidized site assembly. Beginning in the 1940s, the federal government's Urban Renewal Program subsidized the condemnation by local governments of slum properties that were then sold to private entrepreneurs at deep discounts.⁷⁰ The record of Urban Renewal and more recent efforts to subsidize land assembly and site preparation is not impressive. The numbers of jobs created and the amount of private sector investment generated by the program were below the hopes and expecta-

69. See Ronald Brownstein, *After the Riots: The Search for Answers*, L.A. TIMES, May 9, 1992, at A2 (observing that President Bush and his Democratic rival, Bill Clinton, agree "to a surprising extent" on urban policies). For a critique of low income homeownership programs see Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878, 916-28 (1990).

70. HOUSING ACT OF 1949, Pub. L. No. 81-171, §§ 101-10, 63 Stat. 413, 414 (1950).

tions of its proponents.⁷¹ Furthermore, the human toll caused by displacement and the destabilization of nearby residential communities casts doubt upon the efficacy of subsidized site assembly as an anti-poverty program.⁷²

The end of the Urban Renewal Program and shrinking federal inter-governmental subsidies have left state and local governments the major players in urban economic development.⁷³ States and municipalities offer firms a wide variety of inducements to locate within their borders including tax abatements and exemptions, subsidized loans and industrial revenue bonds. Thus far, the prevailing view among economists is that these tax and fiscal inducements have little effect on firm location decisions.⁷⁴

71. See MARTIN ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962*, at 221-22 (1964) (Half of new construction built on Urban Renewal sites would have been built anyway and the magnitude of private investment was relatively small.); JOHN C. WEICHER, *URBAN RENEWAL: NATIONAL PROGRAM FOR LOCAL PROBLEMS* 67-68 (1972) (Government intervention may not be necessary to encourage private redevelopment.); Edwin S. Mills, *Non-Urban Policies as Urban Policies*, 24 *URB. STUD.* 561, 566 (1987) ("There is no direct evidence that renewal programs have stimulated employment other than that which they subsidized on renewal sites."); Roger W. Schmenner, *Industrial Location and Urban Public Management*, in *THE PROSPECTIVE CITY* 446, 464 (Arthur P. Solomon ed., 1980) (Site clearance and preparation programs frequently encounter difficulty in acquiring the types of industry hoped for.). But see Robert P. Grosberg, *Urban Renewal Realistically Reappraised*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* 509, 521 (James Q. Wilson ed., 1966) (For every \$1 of federal money expended, \$4 to \$6 dollars of private construction occurred.).

72. See Herbert J. Gans, *The Failure of Urban Renewal*, in *URBAN RENEWAL: THE RECORD AND THE CONTROVERSY* 537, 537-56 (James Q. Wilson ed., 1966) (describing social problems created by Urban Renewal Program in Boston); Chester Hartman, *The Housing of Relocated Families*, 30 *J. AM. INST. PLAN.* 266, 266-86 (1964) (discussing displacement of families).

73. Since the early 1980s, Secretary of HUD Jack Kemp has promoted the idea of enterprise zones. Depressed areas within cities would be designated enterprise zones and firms located within these zones would be entitled to an array of tax incentives and the reduction of regulatory barriers. Although the concept of enterprise zones has, to date, not been fully implemented by the Congress, many states have created enterprise zones within their borders. To date, research on the effectiveness of this economic development tool is mixed. Compare U.S. GENERAL ACCOUNTING OFFICE, *ENTERPRISE ZONES: LESSONS FROM THE MARYLAND EXPERIENCE* (1988) (Maryland enterprise zone incentives did not cause increase in job creation.) and Richard C. Elling & Ann W. Sheldon, *Determinants of Enterprise Zone Success: A Four State Perspective*, in *ENTERPRISE ZONES: NEW DIRECTIONS IN ECONOMIC DEVELOPMENT* 136, 150 (Roy E. Green ed., 1991) (47 enterprise zones in Illinois, Indiana, Kentucky and Ohio experienced "only modest success.") with Marilyn M. Rubin, *Urban Enterprise Zones in New Jersey: Have They Made A Difference?*, in *ENTERPRISE ZONES: NEW DIRECTIONS IN ECONOMIC DEVELOPMENT* 105, 118 (Roy E. Green ed., 1991) (New Jersey enterprise zone program is a cost-effective economic development tool.).

74. See Willaim F. Fox & Matthew N. Murray, *The Effects of Local Government Public Policies on the Location of Business Activity*, in *INDUSTRY, LOCATION AND PUBLIC POLICY* 97, 117 (Warren W. Herzog, Jr. & Alan M. Schlottman eds., 1991) ("[T]he influence of any single local-government policy on the start-up or location of firms is, in general, very small in any given year."); Susan S. Jacobs & Michael Wasylenko, *Government Policy to Stimulate Economic Development: Enterprise Zones*, in *FINANCING STATE AND LOCAL GOVERNMENT IN THE 1980s* 175, 176 (Norman Walzer & David L. Chicoine eds., 1981) ("[T]he consensus is that local tax differentials have, at best, a secondary influence on business location decisions."); Dennis W. Carlton, *The Location and Employment Choices of New Firms: An Econometric Model With Discrete and Continuous Endogenous Variables*, 65 *REV. ECON. & STAT.* 440, 447 (1983) (Study shows that tax variables are not significantly related to business location.); Schmenner, *supra* note 71, at 461 (Survey of firms in Cincinnati metropolitan

The major reason for this small impact appears to be the much greater weight firms place on other locational considerations—the availability of expansion space, a capable workforce and access to markets—factors for which cities no longer seem to have a comparative advantage.⁷⁵ Another reason for the limited usefulness of economic development incentives is their ubiquity. Since many jurisdictions offer these benefits they cease to generate an advantage for any particular locale.⁷⁶ In addition to tax and fiscal incentives available to all firms, government subsidies have been targeted to minority entrepreneurs. These “black capitalism” programs also, for the most part, have been unsuccessful; subsidized loans extended to minority businessmen in the 1960s and 1970s resulted in high levels of loan defaults and business failures.⁷⁷

Strong market forces have caused industries to leave the city for suburban and offshore sites. The instruments that municipalities have to counteract these forces are both extremely expensive and of limited effectiveness. In addition, at a macroeconomic level, urban redevelopment may well be inefficient. In the seemingly unlikely event that the incentives offered by states and local governments would be sufficient to affect a substantial number of firms’ locational decisions, there would be a risk that the resulting allocation of resources would be sub-optimal.⁷⁸ Whether this waste of resources would be justified on distributional grounds no doubt depends upon its magnitude.⁷⁹

area and New England indicates that tax incentives were of little importance in firm location decisions.); Michael J. Wolkoff, *Chasing a Dream: The Use of Tax Abatements to Spur Economic Development*, 22 *URB. STUDIES* 305, 311 (1985) (Study of Detroit firms shows that property tax abatements are unlikely to have a major impact on capital investment.). *But see* Alberta H. Charney, *Intraurban Manufacturing Location Decisions and Local Tax Differentials*, 14 *J. URB. ECON.* 184, 202 (1983) (Property tax rates are significantly related to location decisions of manufacturing firms.); William F. Fox, *Fiscal Differences and Industrial Location: Some Empirical Evidence*, 18 *URB. STUDIES* 105, 109 (1981) (Study of firms in Cuyahoga County, Ohio shows that property tax and fiscal variables are significant determinants of business location.).

75. *See* Jacobs & Wasylenko, *supra* note 74, at 187 (labor supply and external economies important factors); Schmenner, *supra* note 71, at 457 (space needs are extremely important); Wolkoff, *supra* note 74, at 306 (input and output markets).

76. *See* Franklin J. James, *Urban Economic Development: A Zero-Sum Game?*, in *URBAN ECONOMIC DEVELOPMENT* 157, 161 (Richard D. Bingham & John P. Blair eds., 1984) (“There is no convincing empirical evidence that urban economic development as currently practiced is more than a zero sum game.”).

77. *See* TIMOTHY BATES & WILLIAM BRADFORD, *FINANCING BLACK ECONOMIC DEVELOPMENT* (1979); BENNETT HARRISON, *URBAN ECONOMIC DEVELOPMENT: SUBURBANIZATION, MINORITY OPPORTUNITY, AND THE CONDITION OF THE CENTRAL CITY* 165, 165-66 (1974) (Loss rate on government loans to ghetto businesses is 38% on direct loans and 20% on loans with bank participation.). Although Harrison views black capitalism programs as unsuccessful, he sees hope in collective approaches to development such as community development corporations. *See* HARRISON, *supra*, at 168-84.

78. *See* James, *supra* note 76, at 158.

79. The distributional effects of incentives to lure industry to the inner city are not clear. There

B. *Opening Up The Suburbs and the Economics of Deconcentration*

Since the late 1960s, commentators have argued that the infeasibility and inefficiency of ghetto enrichment programs dictate that a solution to the spatial mismatch of jobs and residences involve the migration of the ghetto poor to the suburbs.⁸⁰ Closer proximity to employment opportunities should facilitate the flow of information regarding job openings. In addition, access to jobs would be facilitated by the reduction of the distance between place of residence and employment.⁸¹

Of equal benefit is the effect that deconcentrating the ghetto would have on future generations. Removing the young from the ghetto would remove them from the harmful effects of concentrated poverty.⁸² Children would no longer be forced to live in environments bereft of middle class influences and role models, where they are tempted to engage in unproductive, deviant or criminal behavior by the influence of peer groups. They would be educated among classmates who are not all poor, in settings where educational achievement is measured by earning good grades rather than by safely negotiating the dangerous streets on their way to school.

However, substantial impediments exist to deconcentrating the ghetto. At present, most suburbs contain relatively little housing that would be affordable to low income households. Regulatory barriers imposed by many suburbs constitute one of the chief reasons for the absence of low cost housing.⁸³ Many suburbs impose an array of land use regulations that have the effect of raising the cost of housing beyond the reach of low and moderate income households. In the short term, deregulation, alone, might not result in substantial deconcentration of the inner city poor to suburban locations. Relaxed land use restrictions would likely permit the conversion of a portion of the existing single family housing stock into multifamily units affordable to low and moderate income households. However, even if most regulatory barriers to housing construction were to vanish, rents of newly constructed housing in the

is no guarantee that inner city employers will hire ghetto residents instead of suburban commuters to fill the jobs created.

80. See, e.g., ANTHONY DOWNS, *OPENING UP THE SUBURBS: AN URBAN STRATEGY FOR AMERICA* (1973); John F. Kain & Joseph J. Persky, *Alternatives to the Gilded Ghetto*, 14 *PUB. INTEREST* 74 (1969).

81. Suburban residents without cars may continue to have difficulty reaching places of employment because of inadequate intra- and inter-suburban transportation networks. Nevertheless, since the distance between employment and residence would have been decreased by suburban residence, it is likely that the cost of remedying the transportation deficiency would likewise be reduced. See DOWNS, *supra* note 80, at 28.

82. See *supra* text accompanying notes 46-68.

83. For a description of these regulatory barriers see *infra* text accompanying note 85.

suburbs would probably outstrip the resources of poor families. Initially, housing subsidies would be required for many of these households.

In the long term, if regulatory barriers to housing construction were eliminated, deconcentration would be much less expensive as filtering occurred.⁸⁴ Although developers would probably not build new, unsubsidized housing with rents affordable to low income households, they would construct apartments for moderate and middle income families. As time passed, residents of these units would move to newer and more desirable accommodations, and the apartments they formerly occupied would filter down to lower income households. Much as it has for the urban poor, increased quantities of newly constructed unsubsidized housing would over time reduce the cost of suburban housing.

A substantial increase in the quantity of either subsidized or unsubsidized housing cannot take place as long as suburban municipalities maintain regulatory barriers that impede its construction. As the recent report of the President's Advisory Commission on Regulatory Barriers to Affordable Housing indicates, municipalities have enacted a large variety of land use regulations that restrict the supply of housing and drive up the cost of new construction.⁸⁵ Among the most common regulations are large lot zoning requirements, minimum frontage rules, expensive subdivision exactions and no-growth ordinances.

Deconcentrating the ghetto poor to suburban locations would necessitate the removal or reduction of exclusionary land use regulations. Whether such deconcentration would promote or impede economic efficiency⁸⁶ is an enormously complex question. In theory, exclusionary zoning⁸⁷ may enhance economic efficiency. One of the fundamental theorems of urban economics is that competition among jurisdictions is likely to promote efficiency. According to Tiebout,⁸⁸ the ability of people

84. See John C. Weicher & Thomas G. Thibodeau, *Filtering and Housing Markets: An Empirical Analysis*, 23 J. URB. ECON. 21, 37 (1988) (Empirical test of the filtering model shows that new construction leads to less standard housing.).

85. See ADVISORY COMM'N ON REGULATORY BARRIERS TO AFFORDABLE HOUSING, "NOT IN MY BACKYARD": REMOVING BARRIERS TO AFFORDABLE HOUSING 2-1 to 2-14 (1991). For a discussion of the Commission's proposals see Michael H. Schill, *The Federal Role in Reducing Suburban Regulatory Barriers to Affordable Housing*, J.L. & POL. (forthcoming 1992).

86. The criterion of economic efficiency used in this article is "Kaldor-Hicks efficiency." A given allocation of resources is Kaldor-Hicks efficient if those made better off could compensate those made worse off. Actual compensation need not be paid. See GEORGE W. DOWNS & PATRICK D. LARKEY, *THE SEARCH FOR GOVERNMENT EFFICIENCY* 7 (1986).

87. I occasionally use the term "exclusionary zoning" to refer to land use practices whose effects are to exclude low income households from a particular jurisdiction. Whether the term takes on a pejorative connotation depends upon the perspective of the reader.

88. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418 (1956).

to move to different jurisdictions creates a market for public goods. Based upon a set of "heroic"⁸⁹ assumptions, including perfect information, costless mobility and the absence of external effects,⁹⁰ Tiebout's model maintains that citizens are consumers who choose to reside in communities that provide their desired mix of public goods.⁹¹ In effect, the existence of decentralized local governments permits individuals to "vote with their feet" selecting a package of taxes and services that is more likely to reflect their preferences than any probable combination offered by higher level governments.⁹²

An efficient Tiebout outcome requires that all individuals in a jurisdiction pay the same amount of taxes (head taxes) for public goods provided by the municipality. Otherwise, a deadweight loss would occur as some individuals paid more for services than the benefits they received while others had their consumption of public goods subsidized. Additional households would then migrate to the community to take advantage of the subsidy eventually causing residents who received less in services than they paid in taxes to migrate elsewhere. No municipality uses a head tax as its primary source of revenue, although as Hamilton observes, zoning regulations can convert the main source of local tax revenue, the property tax, into a head tax.⁹³ Zoning regulations can effectively set a minimum value on property in a community, thereby ensuring that no one who lives in the jurisdiction pays less in taxes than his or her proportionate share of the cost of services provided.⁹⁴

Although suburban exclusionary zoning may have certain efficiency-enhancing properties such as facilitating a system of competing jurisdictions, it may also generate allocative inefficiencies.⁹⁵ Numerous studies

89. See Wallace E. Oates, *An Economist's Perspective on Fiscal Federalism*, in THE POLITICAL ECONOMY OF FISCAL FEDERALISM 3, 7 (Wallace E. Oates ed., 1977).

90. See Tiebout, *supra* note 88, at 419. The model also assumes that consumers can choose to live in a large number of different communities, that their mobility is unhindered by employment considerations, and that communities below the optimum size will seek to attract new residents whereas communities above or at optimum size will discourage new residents. See *id.* at 419-20.

91. See *id.* at 418.

92. See *id.* at 418, 420.

93. See Bruce W. Hamilton, *Zoning and Property Taxation in a System of Local Governments*, 12 URB. STUDIES 205 (1975).

94. See *id.* at 207. See also Edwin S. Mills, *Economic Analysis of Urban Land-Use Controls*, in CURRENT ISSUES IN URBAN ECONOMICS 511, 533 (Peter Mieszkowski & Mahlon Straszheim eds., 1979). For analyses of whether zoning converts the property tax into an efficient source of revenue compare William A. Fischel, *Property Taxation and the Tiebout Model: Evidence for the Benefit View From Zoning and Voting*, 30 J. ECON. LITERATURE 171 (1992) with Peter Mieszkowski & George R. Zodrow, *Taxation and the Tiebout Model: The Differential Effects of Head Taxes, Taxes on Land Rents, and Property Taxes*, 27 J. ECON. LIT. 1098 (1989).

95. Needless to say, exclusionary zoning generates enormous distributional consequences that many would find objectionable. This section, however, emphasizes the effect of restrictive land use regulations on economic efficiency.

have shown that land use regulations increase the price of housing in suburbs.⁹⁶ Higher housing prices alone do not necessarily mean that zoning regulations are inefficient; increased prices may be attributable to the greater desirability of the community and its housing stock. However, if higher housing values in a community are caused by restricting supply rather than stimulating demand the allocation of resources will be sub-optimal. Ellickson observes that existing owners can utilize land use regulations to obtain monopoly profits in suburbs with unique geographic or cultural features.⁹⁷ The existence of monopoly zoning is supported by empirical research. Studies show that metropolitan areas with few competing jurisdictions have higher housing prices than more decentralized regions.⁹⁸ In addition, Pollakowski, Wachter and Cho's recent studies of housing prices in two Washington, D.C. suburbs show that zoning increases the price of housing not only in the community promulgating the ordinance, but in adjacent communities as well.⁹⁹ Fischel argues that this spillover effect provides evidence that increased prices are attributable to supply restraints rather than increased amenities since the size of the jurisdictions makes amenity spillovers unlikely.¹⁰⁰

In addition to the inefficiencies associated with artificial supply restrictions, restrictive suburban zoning wastes resources because of the al-

96. See, e.g., J. Thomas Black & James E. Hoben, *Land Price Inflation and Affordable Housing: Causes and Impacts*, 6 URB. GEOGRAPHY 27, 38 (1985) (Index of regulatory restrictiveness is positively related to single family lot prices in 1980.); Laurence Katz & Kenneth T. Rosen, *The Interjurisdictional Effects of Growth Controls on Housing Prices*, 30 J.L. & ECON. 149, 159 (1987) (Regression analysis indicates that house prices are between 17% and 38% higher in communities with growth controls or moratoria.); David Segal & Philip Srinivasin, *The Impact of Suburban Growth Restrictions on U.S. Housing Price Inflation, 1975-1978*, 6 URB. GEOGRAPHY 14, 23 (1985) (Growth control ordinances are positively related to housing price inflation in sample of 51 metropolitan areas.).

97. See Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 404, 430-31 (1977).

98. See Bruce W. Hamilton, *Zoning and the Exercise of Monopoly Power*, 5 J. URB. ECON. 116, 125-28 (1978) (Study of metropolitan areas in New Jersey suggests that interurban house price variations of as much as 50% may be attributable to monopoly zoning.); Louis A. Rose, *Urban Land Supply: Natural and Contrived Restrictions*, 25 J. URB. ECON. 325, 344 (Monopoly zoning may explain 40% of the interurban price differentials in 45 urban areas.). *But see* William A. Fischel, *Zoning and the Exercise of Monopoly Power: A Reevaluation*, 8 J. URB. ECON. 283, 288-290 (1979) (Replication of Hamilton study with broader definition of zoning authorities fails to find evidence of monopoly zoning.).

99. See Henry O. Pollakowski & Susan M. Wachter, *The Effects of Land-Use Constraints on Housing Prices*, 66 LAND ECON. 315, 323 (1990) (Montgomery County); Susan M. Wachter & Man Cho, *Interjurisdictional Price Effects Of Land Use Controls*, 40 J. URB. & CONTEMP. L. 49, 62-63 (1991) (Fairfax County).

100. WILLIAM A. FISCHEL, DO GROWTH CONTROLS MATTER? A REVIEW OF EMPIRICAL EVIDENCE ON THE EFFECTIVENESS AND EFFICIENCY OF LOCAL GOVERNMENT LAND USE REGULATION 36 (1990). Increased housing prices in jurisdictions adjacent to restrictive suburbs also raise important distributional concerns. If the effect of restrictive suburban zoning is to raise central city housing prices, the effect of exclusionary zoning on the poor will be magnified. In essence, they will be forced to pay for the privilege of being excluded from the suburbs.

ternative locations chosen by or forced upon people and firms. For those inner city residents who are employed, artificially constrained housing choices inhibit the ability of households to optimize the tradeoff between housing consumption and work commutes.¹⁰¹ A large proportion of urban dwellers who might want to live in the suburbs are unable to move there because of the increase in housing costs attributable to restrictive land use regulations. For those with jobs in the suburbs, the inability to move closer to work results in longer commutes and the consumption of scarce resources.¹⁰² Increased automobile usage leads to more rapid depreciation of cars, greater highway congestion and air pollution. This pattern of inefficient spatial location may be further intensified if suburbs use their zoning powers to exclude firms as well as residents. Zoning restrictions against commercial and manufacturing firms could push these enterprises further away from the centers of metropolitan areas contributing to inefficient land use patterns, even greater distances between places of employment and residence and lost agglomeration economies.¹⁰³

In like manner, the external effects of suburban land use practices on central city residents and firms are not limited to pecuniary externalities,¹⁰⁴ but instead are likely to have a negative impact on the efficient allocation of resources. For the ghetto poor, the inability to locate affordable housing in the suburbs contributes to the existence of concentrated poverty. As I discussed in Part I, empirical evidence supports the proposition that geographically concentrated poverty generates social problems among the poor that are both different in kind and of greater magnitude than would occur in a more dispersed setting. In addition to the enormous costs borne by ghetto residents attributable to high rates of teenage pregnancy, school dropouts, crime and drug abuse, these concentration effects also impose costs on the entire metropolis and the nation.

101. See Jeffrey S. Zax, *Compensation for Commutes in Labor and Housing Markets*, 30 J. URB. ECON. 203-04 (1991). Constrained housing choices may also limit the ability of households to shift the burden of commuting expenses to employers. See *id.*

102. See Robert Cervero, *Jobs-Housing Balancing and Regional Mobility*, 55 J. AM. PLAN. ASSOC. 136, 143 (1989) (Empirical study "confirms that housing costs around Bay Area suburban employment centers were a significant push factor in 1980, inducing many workers to live at least four or more miles away from their workplaces.").

103. See WILLIAM A. FISCHEL, *THE ECONOMICS OF ZONING LAWS: A PROPERTY RIGHTS APPROACH TO AMERICAN LAND USE CONTROLS* 261-69 (1985); David F. Bradford & Wallace E. Oates, *Suburban Exploitation of Central Cities and Governmental Structure*, in *REDISTRIBUTION THROUGH PUBLIC CHOICE* 43, 54, 65-67, 84 (Harold M. Hochman & George E. Peterson eds., 1974).

104. For a discussion of the distinction between pecuniary and technological externalities see WILLIAM J. BAUMOL & WALLACE E. OATES, *THE THEORY OF ENVIRONMENTAL POLICY* 28-32 (1975).

Scarce resources must be devoted to increased police protection, remedial education, post-natal health care and prison space. Middle and upper income households and business firms move to locations they would otherwise not have preferred in order to escape the social problems and related financial burdens of the inner city. A generation of urban poor become recipients of public assistance rather than productive members of the workforce.

The bulk of evidence on suburban land use regulation supports the conclusion that as currently practiced restrictive zoning is inefficient.¹⁰⁵ Nevertheless, this observation does not mean that eliminating all restrictive land use regulation would be more efficient than the status quo. Prohibiting suburbs from using restrictive zoning altogether would probably result in substantial diseconomies due to the loss of Tiebout efficiencies.¹⁰⁶ Fortunately, deconcentration need not result in the abandonment of all land use regulation by suburbs. Most proposals for opening the suburbs to the poor contemplate only a modest number of low cost housing units in each community.¹⁰⁷

An analysis of the efficiency implications of deconcentrating the ghetto must take into account the social as well as fiscal costs such a policy would impose on both the ghetto and suburban communities as well as the benefits for the migrants themselves. Deconcentration would impose two sets of costs on remaining ghetto residents. To the extent that selective migration results in households with more resources leaving the ghetto first, the isolation that has contributed to the social problems prevalent in these communities would be intensified. Increased isolation of the very poor, however, need not accompany deconcentration. Housing subsidies could be targeted to very low income households. In addition, as the levels of poverty and racial concentration in central cities decreased, it is likely that economic development and residential growth would be stimulated.¹⁰⁸ This development would likely

105. See FISCHEL, *supra* note 100, at 53 ("Growth controls and other aggressive extensions of land use regulations probably impose costs on society that are larger than the benefits they provide."). Fischel analyzes the results of a study of the Boston housing market. See FISCHEL, *supra* note 103, at 243 (citing GEORGE PETERSON, *THE INFLUENCE OF ZONING REGULATIONS ON LAND AND HOUSING PRICES* (Urban Institute Working Paper 1207-24, July 1974)). The study shows that the losses suffered by the owners of undeveloped land in these communities exceeded the sum of the gains to the community. Fischel concludes, "This study stands in my mind as convincing evidence that conventional suburban zoning is inefficiently restrictive." *Id.*

106. *Cf.* Bradford & Oates, *supra* note 103, at 59-64 (Uniform levels of taxation and expenditure among municipalities in New Jersey would result in large efficiency losses.).

107. Of course, if deconcentration is to rely primarily on filtering, see *supra* text accompanying note 84, the number of new housing units required would probably be larger than the target number of low income households for any particular community.

108. *Cf.* Edwin S. Mills, *Open Housing Laws as Stimulus to Central City Employment*, 17 J. URB.

enhance job opportunities for remaining households and also increase tax revenue per capita that could be used to fund community services.¹⁰⁹

A second potential cost for remaining inner city residents is the potential loss of political power. In several large cities, blacks and other minorities either constitute a majority or are important members of the political coalition in power. Since the inner city poor are disproportionately composed of minorities, they would be relatively more heavily represented in deconcentration efforts than whites and might lose the political gains they have achieved. Deconcentration, however, need not disenfranchise black voters. Voting mechanisms that do not rely upon geographic concentration may be used to empower dispersed minority populations.¹¹⁰ In addition, even if minority communities were to lose political power as a result of deconcentration, it is likely that the substantive gains from deconcentration would be worth the loss of influence in the city. Merely electing mayors in Philadelphia, Detroit and Atlanta does not seem to have materially improved the economic opportunities of minorities in these cities.¹¹¹

Proximity between predominantly black lower income households from the inner city and middle and upper income suburbanites might generate costs for both groups. To the extent that each group would prefer to be separate from the other, deconcentration might decrease overall net welfare.¹¹² Two methodological problems limit the conclu-

ECON. 184, 188 (1985) (Data suggest that facilitating black suburbanization may increase employment and residential growth in central cities.); George Palumbo et al., *Population Decentralization Within Metropolitan Areas: 1970-1980*, 27 J. URB. ECON. 151, 162-63 (1990) (Central city employment growth rates are lower in metropolitan areas with a higher percentage of blacks in the central cities.).

109. An increase in per capita tax revenue could take place merely as a result of the outmigration of people who do not provide net tax revenues. In addition, tax revenue could increase as higher demand for central city land increased property values. Higher demand for central city locations would probably result from the reduction of social problems in the center city, the decreased number of residents requiring redistribution and increased economic activity. Increased benefits for the poor, however, might not be provided if their reduced numbers led to disproportionately less influence over elected officials and lower levels of benefits and taxation.

110. See Lani Guinier, *No Two Seats: The Elusive Quest For Political Equality*, 77 VA. L. REV. 1413, 1452 (1991).

111. See, e.g., ZEEV CHAFETS, *DEVIL'S NIGHT AND OTHER TRUE TALES OF DETROIT* (1990) (Detroit); GARY ORFIELD & CAROLE ASHKNAZE, *THE CLOSING DOOR: CONSERVATIVE POLICY AND BLACK OPPORTUNITY* (1991) (Atlanta); Mark A. Hughes, *Formation of the Impacted Ghetto: Evidence From Large Metropolitan Areas, 1970-1980*, 11 URB. GEOGRAPHY 265, 279-80 (1990) (Philadelphia). Cf. Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 MICH. L. REV. 1077, 1128-34 (1991) ("[B]lack electoral success alone cannot transform the depressed political and economic state of the black community, especially given that blacks are concentrated in politically impotent and economically isolated parts of urban metropolitan areas where racial polarization continues.").

112. See Robert C. Ellickson, *The Irony of "Inclusionary" Zoning*, 54 S. CAL. L. REV. 1167 (1981) (Social scientists doubt whether there are net benefits from economic integration.). For purposes of this analysis of the costs and benefits of deconcentration, I treat all preferences, including

sions one can draw from existing empirical literature on the preferences of households for racial integration. The primary source of information on black and white attitudes with respect to integration are opinion surveys. The data from these studies may be somewhat suspect since many individuals would likely be hesitant to express prejudiced views to a stranger. A second limitation of these studies is their failure to control for the effects of class. Whites who express an aversion to living in close proximity to blacks may be using race as a proxy for economic status. Therefore it is unclear whether a white respondent who says that he prefers not to live near blacks is motivated solely by racist preferences or by a desire to live in a community composed of persons of similar socioeconomic status.¹¹³

With these caveats in mind, evidence on whether blacks and whites object to living in close proximity to each other is somewhat mixed. Most studies show that large majorities of whites do not object to black neighbors, provided that the number of blacks is limited to a modest proportion.¹¹⁴ In one recent survey, a majority of whites expressed a preference for neighborhoods in which they constituted at least 80% of the population.¹¹⁵ Blacks, on the other hand, prefer integrated neighborhoods in which one half of the residents are black, the other half white.¹¹⁶ Despite this preference for neighborhoods with equal proportions of blacks and whites, most blacks also express a willingness to move

those for racial and economic separation, as given. Although these preferences are appropriately considered in the context of an efficiency analysis of deconcentration, policymakers may wish to discount or ignore these preferences on the ground that they are illegal and/or immoral. However, a failure to consider the racial and economic preferences of whites and blacks in the context of a deconcentration policy may result in the resegregation of poor minorities in the suburbs and the reproduction of the problems associated with concentrated poverty. See *infra* text accompanying notes 199-215.

113. It is likely that racism explains a large proportion of the preference of many whites for racially homogenous neighborhoods. Studies show that middle income blacks encounter similar levels of hostility as those who are poor. See Joe Darden, *Choosing Neighbors and Neighborhoods: The Role of Race in Housing Preference*, in *DIVIDED NEIGHBORHOODS: CHANGING PATTERNS OF RACIAL SEGREGATION* 15, 16-17 (Gary A. Tobin ed., 1987). A third limitation of several of these studies is that they do not control for whether the respondent lives in a suburb or city. If one of the motives for suburban location is racial prejudice, one might expect the reactions of suburbanites to differ from those of city dwellers.

114. Lawrence Bobo et al., *Changing Racial Attitudes toward Residential Integration*, in *HOUSING DESEGREGATION AND FEDERAL POLICY* 152, 162-63 (John M. Goering ed., 1986); W.A.V. Clark, *Residential Preferences and Neighborhood Racial Segregation: A Test of the Schelling Segregation Model*, 28 *DEMOGRAPHY* 1, 9-11 (1991); Reynolds Farley, *Neighborhood Preferences and Aspirations Among Blacks and Whites* 5-7 (May 20-21, 1991) (unpublished paper presented at the Urban Institute Urban Opportunity Program Conference on Housing Markets and Residential Mobility in Airlie, Virginia, on file with the *Chicago-Kent Law Review*).

115. See Clark, *supra* note 114, at 9.

116. See *id.* at 9; Farley, *supra* note 114, at 7; Reynolds Farley et al., "Chocolate City, Vanilla Suburbs: Will the Trend Toward Racially Separate Communities Continue?", 7 *SOC. SCI. RESEARCH* 319, 328 (1978).

to predominantly white communities as long as they would not be the only black household in the neighborhood.¹¹⁷ Two studies using methodologies different from opinion poll research reach contradictory conclusions as to whether black households value living in integrated environments. Galtster's hedonic model of house values in St. Louis shows that black owners have an aversion to living in neighborhoods with large black majorities.¹¹⁸ Boehm and Ihlanfeldt's investigation of the determinants of neighborhood satisfaction, however, indicates that among blacks neighborhood racial composition is not a significant factor in neighborhood evaluations.¹¹⁹ Based upon the contradictory evidence on white and black preferences for integration it is difficult to conclude that deconcentration would harm either group. Indeed, the evidence provides modest support for the proposition that as long as the number of black individuals moving to white suburban neighborhoods is limited, both whites and blacks could be made better off.¹²⁰

The best evidence of the potential advantages of deconcentrating the inner city poor to suburban locations are comparisons of the experiences of poor suburban households to urban households. Such comparisons, however, are confounded by the problem of selective migration. If poor households living in the suburbs are systematically different from urban households, a comparison of the experiences of the two groups will be biased.¹²¹ A recent study of participants in the Gautreaux Assisted Housing Program, however, controls for some of the effects of selective migration and demonstrates that the benefits of deconcentration can be considerable. The Gautreaux Program was instituted as a result of a successful lawsuit brought by residents of public housing in Chicago. Plaintiffs challenged intentional segregation on the part of the Chicago

117. See Farley, *supra* note 114, at 7 (NORC survey shows that blacks preferred mostly white neighborhoods to mostly black ones.); Reynolds Farley et al., *Barriers to the Racial Integration of Neighborhoods: The Detroit Case*, 441 ANNALS AM. ACAD. POL. & SOC. SCI. 97, 106 (1979) (Ninety-five percent of blacks would move to neighborhoods whose populations were 13% black.).

118. See George C. Galster, *Black and White Preferences for Neighborhood Racial Composition*, 10 AM. REAL ESTATE & URB. ECON. ASSOC. J. 39, 59 (1982). For neighborhoods that were predominantly white, the effect of racial composition on house value was statistically insignificant. See *id.*

119. See Thomas P. Boehm & Keith R. Ihlanfeldt, *The Revelation of Neighborhood Preferences: An N-Chotomous Multivariate Probit Approach*, 1 J. HOUSING ECON. 33, 53 (1991). The authors also found that whites who lived in neighborhoods where over 75% of their neighbors were white had higher levels of satisfaction. *Id.*

120. Indeed, Downs suggested in the early 1970s that the number of low income households moving to white suburban neighborhoods be limited so as not to raise the opposition of suburban residents to deconcentration. See DOWNS, *supra* note 80, at 138-41. Federal law, however, makes it difficult to limit the number of minorities in particular neighborhoods even when the motive behind the "discrimination" is to promote integration. See *infra* text accompanying notes 200-06.

121. See Jencks & Mayer, *supra* note 21, at 207-08.

Housing Authority (CHA) and the United States Department of Housing and Urban Development (HUD).¹²² In *Gautreaux v. Chicago Housing Authority*,¹²³ a federal appellate court ordered the CHA and HUD to provide housing opportunities for minority public housing applicants in non-segregated areas in Chicago as well as its suburbs.

Under the Gautreaux Assisted Housing Program, applicants for public housing are offered up to three homes in either the city or suburbs. The homes are typically owned by private landlords and the tenants' rents are subsidized by housing vouchers or certificates. Sociologists and lawyers from Northwestern University have interviewed a number of participants in the program to evaluate the effects of deconcentration.¹²⁴ Overall, the findings of these studies provide significant evidence supporting efforts to deconcentrate the inner city. One set of studies focuses on the educational experiences of children. A comparison of youths who had moved to the suburbs seven years earlier with those who had moved within the city shows that the suburban residents have a much lower school drop-out rate and significantly higher college attendance rates. They also tend to earn higher salaries than youths who remained in the city.¹²⁵ Mothers report that suburban schools have higher standards than city schools although, contrary to expectations, these higher standards do not translate into lower grades for the students.¹²⁶ The *Gautreaux* mothers also express greater satisfaction with suburban teachers than do mothers of children attending city schools.¹²⁷ Suburban participants in the *Gautreaux* program are more likely, however, to be placed in special education classes than their urban counterparts.¹²⁸ They are also more likely to experience incidents of racial discrimination.¹²⁹ Overall, however, the levels of satisfaction of suburban mothers with respect to their children's schools, friends and educational progress are significantly

122. For a discussion of the *Gautreaux* case see *infra* text accompanying notes 191-92.

123. 503 F.2d 930 (7th Cir. 1974), *aff'd sub. nom.*, Hills v. Gautreaux, 425 U.S. 284 (1976).

124. Since households have no control over whether they are offered housing in cities or the suburbs, the authors believe that they have minimized the problem selective migration poses in making comparisons among urban and suburban households. See Rosenbaum & Popkin, *supra* note 39, at 346. Nevertheless, the authors do note that participants in the program are not necessarily representative of the low income population in public housing. They generally have smaller families, good rent-paying records and have met housekeeping standards set forth by the organization administering the program. See *id.* at 347.

125. See James E. Rosenbaum, *Black Pioneers — Do Their Moves to the Suburbs Increase Economic Opportunity for Mothers and Children?*, 2 HOUSING POLICY DEBATE 1179, 1198 (1991).

126. See James E. Rosenbaum et al., *White Suburban Schools' Responses to Low-income Black Children: Sources of Successes and Problems*, 20 URB. REV. 28, 30, 39 (1988).

127. See *id.* at 36.

128. Nineteen percent of the suburban children were placed in special education classes compared to 4.9% of the urban children studied. See *id.* at 33.

129. See *id.* at 38.

higher than for the group of mothers who moved within the city.¹³⁰

A recent examination of the employment experience of *Gautreaux* mothers shows that women who moved to the suburbs were 14% more likely to be employed than those who remained in the city.¹³¹ No significant difference, however, was found in the level of hourly wages between the two groups.¹³² Two studies of neighborhood satisfaction provide further support for the proposition that deconcentration generates significant benefits for the *Gautreaux* households. Suburban movers are more satisfied with neighborhood safety, police protection and schools than are those who remained in the city.¹³³ They are less satisfied, however, with public transportation and medical care.¹³⁴ In terms of social integration within their neighborhoods, the results are generally, but not uniformly, positive. Suburban movers interact with their neighbors more than city movers do and have a greater number of interracial friendships.¹³⁵ Children are as well integrated into their communities as their counterparts in the city.¹³⁶ Nevertheless, a significant proportion of the suburban movers have at one time since the move felt isolated and experienced discrimination. These negative experiences, however, have improved with the passage of time.¹³⁷

C. *Neighborhood Satisfaction Of Poor People in Cities and Suburbs*

Despite their obvious relevance to the question of whether deconcentration generates significant benefits, the *Gautreaux* studies are the

130. James E. Rosenbaum & Susan J. Popkin, *Economic and Social Impacts of Housing Integration 25* (Mar. 1990) (unpublished report to the Charles Stewart Mott Foundation, on file with the *Chicago-Kent Law Review*).

131. See Rosenbaum & Popkin, *supra* note 39, at 350-51. Among women who had never been employed before, suburban women were 16% more likely to find jobs. Based upon their interviews with the women, the researchers conclude that the main reasons for the greater probability of employment in the suburbs were increased safety in the community permitting the mothers to leave their children in school without being nearby, more job opportunities in the suburbs and a greater level of self esteem and motivation among the women themselves. See *id.* at 352. The authors do note that some women felt that their employment prospects were harmed by the lack of public transportation, discrimination and the high level of skills required by suburban employers. See *id.* at 353. See also James E. Rosenbaum et al., *Social Integration of Low-Income Black Adults in Middle-Class White Suburbs*, 38 SOC. PROB. 448, 455 (1991) (same).

132. See Rosenbaum & Popkin, *supra* note 39, at 350.

133. See Rosenbaum & Popkin, *supra* note 130, at 21; Rosenbaum et al., *Low-Income Black Children in White Suburban Schools 151* (1986) (unpublished report to the Spencer Foundation of Chicago, on file with the *Chicago-Kent Law Review*).

134. See Rosenbaum & Popkin, *supra* note 130, at 21. Suburban residents found hospitals and doctors less willing to accept Medicaid than urban health care providers. See *id.*

135. Rosenbaum et al., *supra* note 133, at 150, 153.

136. See *id.* at 152.

137. See Rosenbaum & Popkin, *supra* note 130, at 20; see also Rosenbaum et al., *supra* note 131, at 455 (same).

only recent attempts by social scientists to compare neighborhood conditions of poor city dwellers and suburbanites. In this section, I use data from the 1987 American Housing Survey (AHS) to evaluate the neighborhood and housing circumstances of poor households in central cities and suburbs.¹³⁸

The AHS is a biennial survey of close to 50,000 households randomly selected throughout the nation by the Census Bureau.¹³⁹ Among the advantages of the AHS over the decennial census are its greater frequency and a much more detailed set of questions concerning housing and neighborhood characteristics. To examine the neighborhood and housing conditions of urban and suburban poor households, all respondents living outside of metropolitan areas were excluded from the sample. From the remaining 30,413 respondents, those with family incomes¹⁴⁰ below the poverty level for 1987 were selected for study. The size of this sub-sample is 3,484 respondents; 1,945 live in central cities, the remainder in suburbs.¹⁴¹

Table 1 compares selected personal and housing characteristics for urban and suburban households with appropriate breakdowns by race.¹⁴² In terms of marital status, more single poor households live in the suburbs than in the city. Nevertheless, for the entire sample of poor households, the proportion of households headed by a single mother is greater in the central city than in the suburbs. White households in central cities are significantly better educated than their suburban counterparts. For blacks and Hispanics, however, the differences in education are not statistically significant.

As might be expected, the proportion of poor households that own

138. The data used is from the American Housing Survey, 1987: National Core File.

139. The AHS is conducted by the Census Bureau under a contract with HUD. The Census Bureau and HUD also collaborate on an annual survey of metropolitan areas. Every four years samples of between 3,000 and 5,000 households are interviewed in 44 metropolitan areas. The questionnaire administered for the metropolitan samples is similar to the one used for the national sample. See U.S. DEP'T OF COMMERCE & U.S. DEP'T OF HUD, *American Housing Survey for the United States in 1987*, vii-xiv (1989).

140. Income includes cash transfer payments but does not include the value of in-kind subsidies such as food stamps. It is likely that the respondents understate their actual income. See *id.* (Errata to page 10).

141. Of the respondents below the poverty level living in central cities, 948 were white and 739 were black; with respect to the suburbs, 1,228 of the poor respondents were white and 184 were black. The American Housing Survey weights the responses to the survey to adjust for non-response. The adjusted data is used in the frequency, regression and probit analyses. For a discussion of the weighting procedure see U.S. DEP'T OF COMMERCE & U.S. DEP'T OF HUD, *supra* note 139, at app. 57 to app. 58.

142. The only racial or ethnic breakdowns are for whites, blacks and Hispanics. Although the AHS also identifies Asians and American-Indians, the numbers of respondents in these categories is too small for meaningful statistical analyses. All races and ethnicities, however, are included in the "All Races" category.

TABLE 1: PERSONAL AND HOUSING CHARACTERISTICS OF METROPOLITAN HOUSEHOLDS BELOW POVERTY LEVEL (1987)

	ALL RACES			WHITES			BLACKS			HISPANICS		
	CITY	SUBURB		CITY	SUBURB		CITY	SUBURB		CITY	SUBURB	
Marital Status												
Single	21.6	33.1		21.3	33.6		13.7	20.4		38.5	44.6	
Married	78.4	66.9	p < .001	78.7	66.4		86.4	79.6	p < .05	61.5	55.4	n.s.
Single Mother												
Yes	26.7	20.6		13.9	16.3		39.3	37.7		34.1	29.3	
No	73.3	79.4	p < .001	86.1	83.7	n.s.	60.7	62.3	n.s.	65.9	70.7	n.s.
Education												
Less than 12 years	48.6	48.2		40.4	44.2		52.2	55.0		65.9	73.5	
High School Graduate	31.4	34.8		32.0	36.4		35.4	36.0		22.2	20.2	
Some College	4.3	3.3		6.9	3.7		1.4	2.1		1.8	0.8	
College Graduate	13.0	11.3		16.2	12.8		9.7	6.9		9.0	5.6	
Graduate School	2.8	2.4	n.s.	4.5	2.9	p < .001	1.3	0	n.s.	1.1	1.0	n.s.
Housing Tenure												
Own	23.3	48.9		31.3	53.2		17.5	37.5		17.7	35.9	
Rent	76.7	51.1	p < .001	68.7	46.8	p < .001	82.5	62.5	p < .001	82.3	64.1	p < .001
Housing Costs/Income												
0-29.9%	14.7	19.6		12.0	18.4		18.8	23.2		14.6	26.7	
30.0-39.9%	10.7	9.0		10.6	9.1		10.0	10.5		12.7	6.6	
40.0-49.9%	8.8	10.1		9.1	9.6		7.4	11.5		11.6	13.3	
50.0% or more	65.8	61.3	p < .001	68.3	62.9	p < .001	63.8	54.8	p < .10	61.1	53.4	p < .01
Overall House Evaluation												
Unfavorable	9.6	6.7		5.3	5.1		12.4	11.3		14.8	12.5	
Neutral	21.4	17.4		18.9	17.3		23.1	19.8		23.0	12.6	
Favorable	69.0	76.0	p < .001	75.8	77.6	n.s.	64.6	69.0	n.s.	62.2	74.9	p < .05
Structural Adequacy												
Adequate	81.9	87.4		90.8	91.7		74.5	67.7		74.6	81.5	
Inadequate	18.1	12.6	p < .001	9.2	8.3	n.s.	25.5	32.3	p < .10	25.4	18.5	n.s.

Note: All numbers are percentages and may not total 100% because of rounding

homes is significantly greater in the suburbs than in the central cities. Households living in the city also seem to have higher housing cost burdens than do suburban households. The proportion of households paying less than 30% of their reported income for housing-related expenses is greater in the suburbs whereas the proportion paying in excess of 50% of income is higher for those who live in the central cities. As one might expect with poor households, the proportion of income devoted to housing expenses is rather high. Close to two-thirds of all households pay in excess of 50% of their reported income on housing.

With respect to the condition of their housing, a greater proportion of city residents rated their homes unfavorably as compared to suburban households.¹⁴³ Similarly, a larger proportion of urban dwellings were rated structurally inadequate by the Census Bureau interviewers.¹⁴⁴ Among blacks, however, the proportion of homes that were classified as structurally inadequate is significantly greater in the suburbs than the central city.

Table 2 compares the neighborhood conditions of poor households in cities and suburbs. The first impression one gets from the data is the rather high levels of neighborhood satisfaction expressed by households in both urban and suburban settings. When asked to evaluate their neighborhoods, 62.8% of the urban residents gave favorable ratings; among suburbanites the proportion exceeds three-quarters.¹⁴⁵ As the overall neighborhood evaluation indicates, suburban neighborhoods are rated higher than urban neighborhoods: 16.3% of urban households gave their neighborhoods unfavorable ratings compared to only 9% of the suburban respondents. When asked what neighborhood problems bothered them, a greater proportion of urban dwellers mentioned crime, litter, bad public services and bad people in the community.

For advocates of deconcentration, however, the neighborhood evaluation data reveal potentially troubling conditions when race is taken into account. Comparing both white and Hispanic households in the suburbs to those living in cities, a significantly greater proportion of the suburban residents express favorable neighborhood evaluations and a

143. The question on housing quality asked the households to rate their homes as a place to live on a scale of 1 to 10 with 1 being the lowest rating and 10 being the highest. I collapsed the responses into three categories for the frequency analysis: Unfavorable (1-4), Neutral (5-6), and Favorable (7-10).

144. A structurally inadequate dwelling is defined as having one of a list of enumerated problems concerning plumbing, heating, upkeep, hallways or kitchens. For a full definition of structural inadequacy, see U.S. DEP'T OF COMMERCE & U.S. DEP'T OF HUD, *supra* note 139, at app. 15.

145. The overall neighborhood quality rating question has the same structure as the housing quality rating item. The scale was collapsed into similar categories for the frequency analysis. See *supra* note 143.

TABLE 2: NEIGHBORHOOD CHARACTERISTICS OF METROPOLITAN HOUSEHOLDS
BELOW POVERTY LEVEL (1987)

	ALL RACES			WHITES			BLACKS			HISPANICS		
	CITY	SUBURB		CITY	SUBURB		CITY	SUBURB		CITY	SUBURB	
Crime Problems												
Yes	13.5	4.4		9.5	3.7		16.6	7.6		17.9	5.2	
No	86.5	95.6	p<.001	90.5	96.3	p<.001	83.4	92.4	p<.01	82.1	94.8	p<.001
Litter												
Yes	7.2	4.3		5.1	3.6		10.2	9.0		6.9	2.9	
No	92.8	95.7	p<.001	94.9	96.4	p<.10	89.8	91.0	n.s.	93.1	97.1	p<.10
Dilapidated Properties												
Yes	1.3	1.4		1.9	1.5		0.9	2.2		0.7	0	
No	98.7	98.6	n.s.	98.1	98.5	n.s.	99.1	97.8	n.s.	99.3	100	n.s.
Bad Services												
Yes	2.5	1.3		1.6	1.0		3.5	1.7		3.2	2.6	
No	97.5	98.7	p<.01	98.4	99.0	n.s.	96.5	98.3	n.s.	96.8	97.4	n.s.
Bad People												
Yes	19.9	15.3		20.5	15.6		19.9	16.8		21.3	9.6	
No	80.1	84.7	p<.001	79.5	84.4	p<.01	80.1	83.2	n.s.	78.7	90.4	p<.01
Overall Neighborhood Evaluation												
Unfavorable	16.3	9.0		12.2	7.6		20.9	18.7		17.6	6.4	
Neutral	21.8	14.2		21.3	13.2		21.8	17.4		23.1	15.0	
Favorable	62.8	76.9	p<.001	66.5	79.2	p<.001	57.4	64.0	n.s.	59.3	78.6	p<.001

Note: All numbers are percentages and may not total 100% because of rounding

smaller proportion have problems with crime, litter and bad people. For blacks, however, the difference in neighborhood evaluation between city and suburban households is statistically insignificant. Only with respect to crime does a significant difference emerge in favor of the suburbs. If black households are no better off in the suburbs than they are in the cities, one of the principal justifications for deconcentration evaporates.

The apparently different reactions of white and Hispanic households, on the one hand, and black households, on the other, to suburban neighborhoods may be caused by the limited control variables (race, place of residence and poverty status) introduced into the frequency analysis. A more complete analysis would utilize multivariate techniques to control for the effects of a series of personal characteristics as well. Controlling for personal and family characteristics would also help filter out some of the bias attributable to selective migration.¹⁴⁶ Therefore four models are presented in which neighborhood satisfaction is hypothesized to be a function of variables that include the respondent's personal characteristics and place of residence.¹⁴⁷ Studies demonstrate that personal characteristics are significantly related to neighborhood and residential satisfaction.¹⁴⁸ The personal characteristics that I control for in each of the four models are income (INCOME), tenure (RENT),¹⁴⁹ race (BLACK, HISPANIC), geographic region (NE, SOUTH, WEST), level of education (ED0, ED2, ED3),¹⁵⁰ availability of a car or truck

146. Of course, the results of this analysis may still be biased because of an inability to control for all relevant differences among the two groups. As expected in research of this type, the Adjusted R-Squared is unfortunately very low, 0.10, meaning that the regression models account for only 10% of the variance in the dependent variable.

147. Subjective evaluations of neighborhood quality may be criticized on the ground that individuals are not truly aware of their feelings, are subject to cognitive dissonance or are unable to make distinctions among categories in a ten level scale. Nevertheless, objective indicators of neighborhood quality are difficult to devise and it is unclear that any particular metric chosen by the researcher would be salient to the person whose views are being canvassed. I prefer to rely on the stated views of the survey respondents rather than second guessing their validity or devising a scale that may have little relevance to them. For a discussion of the appropriateness of subjective indicators of neighborhood quality see MICHAEL H. SCHILL & RICHARD P. NATHAN, *REVITALIZING AMERICA'S CITIES: NEIGHBORHOOD REINVESTMENT AND DISPLACEMENT* 70 (1983).

148. See, e.g., Sue Weidemann & James R. Anderson, *A Conceptual Framework for Residential Satisfaction*, in *HOME ENVIRONMENTS* 153, 161-62 (Irwin Altman & Carol M. Werner eds., 1985); Christine C. Cook, *Components of Neighborhood Satisfaction: Responses from Urban and Suburban Single-Parent Women*, 20 *ENVIR. & BEHAVIOR* 115, 136-37 (1988); George C. Galster, *Identifying the Correlates of Dwelling Satisfaction: An Empirical Critique*, 19 *ENVIR. & BEHAVIOR* 539, 555 (1987); George C. Galster & Garry W. Hesser, *Residential Satisfaction: Compositional and Contextual Correlates*, 13 *ENVIR. & BEHAVIOR* 735, 747 (1981); Barrett A. Lee & Avery M. Guest, *Determinants of Neighborhood Satisfaction: A Metropolitan-Level Analysis*, 24 *SOC. Q.* 287, 299 (1983); Craig St. John & Frieda Clark, *Racial Differences in Dimensions of Neighborhood Satisfaction*, 15 *SOC. INDICATORS RES.* 43, 53-54 (1984).

149. RENT is a dummy variable. It takes on the value of "0" if the respondent is an owner; "1" if he rents.

150. ED0 is a dummy variable that takes on the value of "1" if the respondent has not graduated

(CAR),¹⁵¹ age (AGE), family structure (SINGLE, SINGMOM, KIDS)¹⁵² and number of years at the same address (TENYRS). To test for non-linear effects of certain continuous variables, I also control for the squared values of income, age and number of years at the same address (INCOMESQ, AGESQ, TENYRSQ). In two of the four models (Models 2 and 4), I control for whether the respondent lives in public housing (PROJECTS).

The independent variable of particular interest is whether the respondent lives in a suburb or central city. In two of the models (Models 1 and 2), the dummy variable SUBDUM takes on the value of "0" if the respondent lives in a city and "1" if he lives in a suburb. To test whether urban/suburban location has a differential effect on the neighborhood satisfaction of poor whites, blacks and Hispanics, in Models 3 and 4 I interact the SUBDUM variable with the race of the respondent (WHSUBDUM, BLSUBDUM and HISUBDUM). If suburban residence is related to higher levels of neighborhood satisfaction, the SUBDUM variable(s) should take on positive values.

Table 3 contains the estimated coefficients for each of the independent variables computed using ordinary least squares (OLS). There is some question as to whether OLS is an appropriate method for analyzing data such as the AHS neighborhood evaluation scale which are not, strictly speaking, interval level data.¹⁵³ Nevertheless, most studies analyzing similar scales use parametric statistics¹⁵⁴ and several econometric studies indicate that the violation of the interval data assumption should have little impact.¹⁵⁵ Since OLS coefficients are relatively easily interpreted and most research indicates little loss in precision should result,

from high school and "0" if he has. ED2 is a dummy variable that takes on the value of "1" if the respondent has some college education, but has not graduated and "0" if he has no college or has graduated from college. ED3 is a dummy variable that takes on the value "1" if the respondent has graduated from college and "0" if he has not.

151. CAR is a dummy variable that takes on a value of "0" if the respondent does not have a car or truck available to him and "1" if he does.

152. SINGLE is a dummy variable that takes on the value of "0" if the respondent is married and "1" if he or she is unmarried. SINGMOM is also a dummy variable that takes on the value of "1" if the respondent is an unmarried mother with children under the age of 18 living in her household and "0" otherwise. KIDS is a continuous variable for the number of children, if any, in the household.

153. See Thomas R. Knapp, *Treating Ordinal Scales as Interval Scales: An Attempt to Resolve the Controversy*, 39 NURSING RES. 121 (1990).

154. See, e.g., Ralph B. Brown et al., *Community Satisfaction and Social Integration in a Boomtown*, 54 RURAL SOC. 568, 576 n.6 (1990); Cook, *supra* note 148, at 126; Galster & Hesser, *supra* note 148, at 739; Lee & Guest, *supra* note 148, at 299; Rosenbaum & Popkin, *supra* note 130, at 85 n.17.

155. See HUBERT M. BLALOCK, *SOCIAL STATISTICS* 444 (2d ed. 1979); Sanford Labovitz, *The Assignment of Numbers To Rank Order Categories*, 35 AM. SOC. REV. 515 (1970).

Models 1 to 4 in Table 3 are computed according to the OLS procedure. To ensure that the estimates generated by the OLS model do not lead to inappropriate interpretations of the data, each model is re-estimated in the appendix using a multinomial ordered probit.¹⁵⁶ Where the results of the probit analysis are substantially different from the OLS estimates, a description of the difference is given in the text or accompanying notes.

Models 1 through 4 indicate that neighborhood satisfaction is positively related to owning a car and negatively related to being black or single, the number of children in the household, the numbers of years at the same address and living in the western part of the nation or in public housing. AGE and HISPANIC are marginally significant and positively related to increased neighborhood satisfaction in two out of the four models. SINGMOM is marginally significant and negatively related to neighborhood satisfaction in two of the four models. Although INCOME is statistically insignificant in all four equations, INCOMESQ is significant and negative implying that as income increases, neighborhood satisfaction increases at a decreasing rate.¹⁵⁷

Of particular interest, in Models 1 and 2 the estimated coefficient for living in a suburb is positive and highly significant, suggesting that controlling for personal characteristics, living in the suburbs increases a poor person's level of neighborhood satisfaction. This result is consistent with the analysis of frequencies in Table 2. Models 3 and 4 test for racial differences in the effect living in the suburbs has on neighborhood satisfaction. In both models, the interaction variables for whites and Hispanics show relatively large and highly significant positive effects from living in suburban communities. For blacks, however, the estimated coefficients are much smaller and marginally significant in only one of the two models. The probit analysis, however, shows that the coefficient for the black interaction variable is significant and positive in both of the models, although its magnitude is much smaller than the interaction variables for whites and Hispanics.

American Housing Survey data from 1987, therefore, provide some additional support for deconcentration efforts.¹⁵⁸ Poor households living

156. The probit model is also used in Boehm & Ihlanfeldt, *supra* note 119. The neighborhood rating variable is collapsed from ten to five categories for use in the probit. The reason for this alteration was that certain of the ten categories had relatively few responses, generating a statistical difficulty akin to multicollinearity.

157. The probit analysis is generally consistent with the OLS results except as described herein. BLACK and SINGMOM have the same signs as they do in the OLS model, but are insignificant in all four models. RENT is statistically significant and negatively related to neighborhood satisfaction in each model and the coefficient for SOUTH is positive and significant.

158. The results of this analysis should be viewed as suggestive rather than conclusive. Although many personal characteristics were controlled for, many others, no doubt, are relevant,

TABLE 3: NEIGHBORHOOD SATISFACTION (OLS)

VARIABLE	MODEL 1	MODEL 2	MODEL 3	MODEL 4
CONSTANT	6.511181* (16.40)	6.455251* (16.18)	6.517631* (16.39)	6.459459* (16.16)
SUBDUM	0.682060* (7.12)	0.670248* (6.98)	—	—
WHSUBDUM	—	—	0.676096* (5.82)	0.669550* (5.75)
BLSUBDUM	—	—	0.359987*** (1.78)	0.326190 (1.60)
HISUBDUM	—	—	1.258663* (4.72)	1.251094* (4.69)
INCOME	0.000041 (1.16)	0.000037 (1.04)	0.000042 (1.19)	0.000038 (1.07)
INCOMESQ	-0.000005*** (-1.86)	-0.000005*** (-1.78)	-0.000005*** (-1.91)	-0.000005*** (-1.83)
RENT	-0.198764 (-1.62)	-0.142688 (-1.14)	-0.201277 (-1.64)	-0.145171 (-1.16)
BLACK	-0.315215* (-2.84)	-0.295736* (-2.65)	-0.260834** (-2.03)	-0.234911*** (-1.82)
HISP	0.250024*** (1.69)	0.249739*** (1.69)	-0.066517 (0.37)	-0.067175 (0.38)
NE	0.024695 (0.19)	0.030650 (0.23)	0.045183 (0.34)	0.051927 (0.39)
SOUTH	0.155380 (1.35)	0.149687 (1.30)	0.180176 (1.56)	0.175254 (1.51)
WEST	-0.229083 (-1.63)	-0.250485*** (-1.77)	-0.247440*** (-1.75)	-0.268284*** (-1.89)
ED0	0.100105 (0.98)	0.109927 (1.07)	0.096179 (0.90)	0.106276 (1.04)
ED2	0.139300 (0.95)	0.119237 (0.81)	0.138097 (0.94)	0.118617 (0.81)
ED3	0.067049 (0.35)	0.048354 (1.25)	0.069778 (0.36)	0.052087 (0.27)
CAR	0.225637** (2.15)	0.205006*** (1.94)	0.229819** (2.19)	0.209970** (1.99)
AGE	0.021898 (1.60)	0.024126*** (1.75)	0.021079 (1.54)	0.023207*** (1.69)
AGESQ	0.000260 (0.20)	0.000135 (0.10)	0.000336 (0.26)	0.000219 (0.17)
SINGLE	-0.376284* (-3.00)	-0.371949* (-2.96)	-0.373468* (-2.97)	-0.368095* (-2.93)
SINGMOM	-0.248458*** (-1.68)	-0.219339 (-1.47)	-0.252781*** (-1.70)	-0.223556 (-1.50)
KIDS	-0.129681** (-2.43)	-0.120659** (-2.42)	-0.116315** (-2.34)	-0.116329** (-2.33)
TENYRS	-0.025652** (-2.50)	-0.024876** (-2.42)	-0.025632** (-2.49)	-0.024832** (-2.42)
TENYRSQ	0.000327*** (1.78)	0.000304*** (1.65)	0.000323*** (1.76)	0.000300 (1.63)
PROJECTS	—	-0.353357** (-2.54)	—	-0.349868** (-2.52)
OBSERVATIONS	3,484	3,469	3,484	3,469
Adj. R ²	.10	.10	.10	.10

* p < .01

** p < .05

*** p < .10

Note: T statistics are in parentheses.

in suburban locations report fewer neighborhood problems and seem to be more content with their neighborhoods than their urban counterparts. Nevertheless, the results also suggest that the effect of living in the suburbs is weaker for black households than it is for whites and Hispanics. This apparent differential impact may be caused by differences in the types of suburban neighborhoods in which blacks and other racial groups live. Empirical studies consistently show that although black suburbanization has increased over the past twenty years, residential patterns in the suburbs are segregated.¹⁵⁹ To the extent that poor blacks have moved into segregated suburban communities composed of similar people, they may still suffer from the problems they thought they had left behind in the city.

Resolving or ameliorating the problems of the inner city ghetto is an enormously complex undertaking. Each alternative, whether it be enrichment or deconcentration, is expensive and presents almost as many potential problems as it solves. It would be simplistic to believe that any one approach is optimal in solving the problem of concentrated poverty in all cities where ghettos exist. Under certain circumstances, fostering economic development or improving transportation links between central cities and suburbs¹⁶⁰ may provide an efficient and effective solution to

but not included in the American Housing Survey. Thus the potential effects of selective migration cannot be totally ignored. See *supra* note 146. In addition, the analysis uses a national sample and therefore aggregates an enormous number of cities and suburbs. As I discuss in Part I, the benefits of deconcentration are likely to be greatest in the largest cities, especially those located in the Northeast and Midwest. One might expect the differences between urban and suburban residents to be even greater in a sample limited to these metropolitan areas. I am presently engaged in a study using the metropolitan samples of the American Housing Survey that examines urban/suburban differences in ten of the nation's largest metropolitan statistical areas. The metropolitan samples permit much greater control over demographic variables since one can identify location of residence in sub-municipal zones. See Nelson, *supra* note 46, at 3-4.

159. See John R. Logan & Mark Schneider, *Racial Segregation and Racial Change in American Suburbs, 1970-1980*, 89 AM. J. SOC. 874, 887 (1984) (During the 1970s racial segregation increased in the northern suburbs and decreased in Sunbelt suburbs.); Douglas S. Massey & Nancy Denton, *Suburbanization and Segregation in U.S. Metropolitan Areas*, 94 AM. J. SOC. 592, 621 (1988) ("When suburban residence is achieved by blacks, segregation is reduced, but it remains quite high compared with other minority groups.")

160. See MARK A. HUGHES, *FIGHTING POVERTY IN CITIES: TRANSPORTATION PROGRAMS AS BRIDGES TO OPPORTUNITY* (National League of Cities Research Report, 1989). A policy to improve transportation links between central cities and areas of employment in the suburbs is likely to have only limited success. Suburban employment centers are more dispersed than those in the inner city and are frequently difficult to reach by public transit. Therefore a transportation-oriented policy would likely be prohibitively expensive. In addition, there is some evidence that even if access were improved, employers would avoid hiring inner city residents based on the use of stereotypes tied to their location of residence. See Joleen Kirschenman & Kathryn M. Neckerman, "We'd Love to Hire Them, But . . .": *The Meaning of Race for Employers*, in *THE URBAN UNDERCLASS* 203, 215 (Christopher Jencks & Paul E. Peterson eds., 1991). (Survey of Chicago area employers reveals negative attitude toward job applicants from the inner city.); Kathryn M. Neckerman & Joleen Kirschenman, *Hiring Strategies, Racial Bias, and Inner-City Workers*, 38 SOC. PROB. 433, 435 (1991) (same). Furthermore, improved transportation would not improve information about suburban job openings,

particular problems. Nevertheless, a deconcentration strategy seems to offer the best long term strategy for resolving the spatial mismatch of jobs and residences and breaking the hold of concentrated poverty. Such a strategy, however, must avoid merely dumping minority households in communities where the social problems of the ghetto will be reproduced. Instead, to be effective, deconcentration must involve the entire metropolitan area.¹⁶¹

III. DECONCENTRATION AND LAW

Deconcentration of the ghetto cannot occur to any appreciable degree without legal change. To date, most legislators and judges have either been unresponsive to or ineffective in efforts to open up the suburbs. In this part, I examine how the law facilitates or impedes efforts to promote deconcentration.

A. Federal Law

Federal law provides only limited assistance to those who wish to deconcentrate inner city ghetto populations. In this section, I examine how the law affects two elements of a comprehensive deconcentration strategy: (1) the relaxation of zoning requirements and (2) the maintenance of integrated communities.

1. Relaxation of Zoning Barriers

Restrictive suburban zoning may be challenged by landowners on the ground that their property rights have been diminished or by low income households claiming that the land use regulations wrongfully exclude them from the jurisdiction. Landowner challenges to zoning ordinances under federal law are usually based upon the argument that the regulation impairs property rights in violation of either the Constitution's Due Process or Just Compensation Clauses.¹⁶² Due process challenges to zoning are seldom successful.¹⁶³ The first Supreme Court case

nor would it improve the quality of education in inner city neighborhoods or diminish the neighborhood effects of concentrated poverty.

161. A requirement that deconcentration involve all suburbs in a given metropolitan area would also remove the incentive for existing residents to move elsewhere so as to avoid the burden of increased social service requirements or the perceived negative effects of living in close proximity to households of different races or socioeconomic classes.

162. See U.S. CONST. amends. V, XIV. The Just Compensation Clause applies to states and municipalities by virtue of its incorporation through the fourteenth amendment. See *Chicago B. & Q. R.R. v. City of Chicago*, 166 U.S. 226 (1897).

163. *But see Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (Zoning ordinance that forbids a grandmother from living with two sets of grandchildren who are not siblings violates substantive due process.).

on the constitutionality of zoning, *Euclid v. Ambler Realty Co.*,¹⁶⁴ established the deferential approach federal courts take in disposing of due process lawsuits. In *Euclid*, Ambler Realty owned a parcel of land located in between a major thoroughfare and railroad tracks. The land's zoning classification did not allow profitable industrial uses. Ambler Realty's due process challenge to the ordinance was rejected by the Supreme Court on the ground that zoning was well within the village's police power. The Court determined that it could not say that the ordinance was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. . . ."¹⁶⁵ In a rather exceptional passage of *dicta*, the Court also stated that zoning ordinances could be used to restrict apartment buildings, a use the Court characterized as parasitic.¹⁶⁶ Subsequent Court decisions wax lyrical over the advantages of zoning ordinances that limit multi-family housing and in so doing preserve zones "where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people."¹⁶⁷

A similar deference to the land use decisions of municipalities characterizes the Court's takings jurisprudence. Under the Just Compensation Clause, "private property [shall not] be taken for public use without just compensation."¹⁶⁸ The Court has determined that government regulations that do not physically appropriate private property may still constitute a taking if they "go too far."¹⁶⁹ Nevertheless, the Court has upheld most instances of land use regulation on the ground that the landowner did not lose all viable use of the property¹⁷⁰ or that the regulation prohibited the landowner from maintaining a nuisance.¹⁷¹ Under current

164. 272 U.S. 365 (1926).

165. *Id.* at 395.

166. "[I]n such sections of [developments of detached housing] very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun" *Id.* at 394.

167. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 (1974) (upholding zoning ordinance that prohibited more than two unrelated people from living in house).

168. U.S. CONST. amend. V.

169. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.")

170. *See, e.g., Agins v. Tiburon*, 447 U.S. 255, 260 (1980) (*dicta*) (justifying zoning ordinance on ground that it did not deprive owner of all viable use of property); *Pennsylvania Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 136 (1978) (upholding historic landmarking of Grand Central Terminal partly on ground that owner can earn a "reasonable return" on its investment).

171. *See, e.g., Hadacheck v. Sebastian*, 239 U.S. 394 (1926) (upholding ordinance making it illegal to operate brickworks). An independent theory occasionally used to justify zoning is that the regulation creates a "reciprocity of advantage." Although zoning ordinances might harm a land-

constitutional jurisprudence, a landowner whose plans to build low cost housing in the suburbs are blocked by a restrictive zoning ordinance is virtually certain to lose if he bases his legal challenge on the impairment of his property rights.¹⁷²

Challenges to restrictive zoning ordinances by households excluded from municipalities on the ground that the ordinances violate the Equal Protection Clause of the United States Constitution are also unlikely to succeed. State and local actions that treat people unequally are usually upheld by courts as long as they are rationally related to a legitimate government purpose. To challenge successfully a government action such as exclusionary zoning on equal protection grounds, one must normally show either that the policy discriminates against members of a suspect class or burdens a fundamental right.¹⁷³ Challenges to exclusionary zoning ordinances by low income households are unlikely to succeed because the poor are not deemed to be members of a suspect class¹⁷⁴ and housing is not a fundamental right.¹⁷⁵

In areas where concentrated inner city poverty is most severe, however, a disproportionate number of households are nonwhite and thus members of a suspect class. Nevertheless, the Supreme Court has placed a rather formidable roadblock in the way of constitutional challenges to suburban zoning by or on behalf of inner city blacks. In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,¹⁷⁶ a non-profit sponsor of low income housing arranged to purchase property in Arlington Heights, a suburb of Chicago in which only 27 of the 64,000 residents were black. After the village refused the developer's request to rezone a 15 acre site from single-family dwelling use to multi-family

owner by diminishing the value of his property, the landowner also benefits from restrictions placed upon others. See *Agins*, 447 U.S. at 262 (in assessing the fairness of zoning ordinances, benefits to landowners must be considered as well as diminution of value); *Pennsylvania Cent.*, 438 U.S. at 147 (Rehnquist, J., dissenting) ("While zoning at times reduces individual property values, the burden is shared relatively evenly and it is reasonable to conclude that on the whole an individual who is harmed by one aspect of the zoning will be benefited by another.").

172. *But cf.* *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) (Requirement that landowner contribute easement to state in return for building permit violated Just Compensation Clause.); *Nectow v. City of Cambridge*, 277 U.S. 183 (1928) (Placement of a strip of land in residential district did not bear a substantial relation to the public health, safety, morals, or general welfare.).

173. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). *But see* *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985) (invalidating zoning ordinance on grounds that it was not rationally related to a legitimate government purpose). If a government action discriminates against members of a suspect class or burdens a fundamental right, the action must typically be necessary to achieve a compelling government purpose in order to survive scrutiny. See *Rodriguez*, 411 U.S. at 17.

174. See *Rodriguez*, 411 U.S. at 18-29.

175. See *Lindsay v. Normet*, 405 U.S. 56 (1972).

176. 429 U.S. 252 (1977).

housing, the developer challenged the failure to rezone under constitutional and statutory grounds. The Court of Appeals for the Seventh Circuit found that although there was no evidence of discriminatory intent, the failure to rezone had a discriminatory impact on blacks and therefore violated the Equal Protection Clause.¹⁷⁷ The Supreme Court reversed the appellate court's ruling on the ground that discriminatory effect was insufficient to prove a violation of the Equal Protection Clause; proof of racially discriminatory intent was required.¹⁷⁸

The requirement that plaintiffs show that a municipality's zoning laws are motivated by a racially discriminatory intent is often insurmountable. In many instances, zoning ordinances that today have a disproportionate impact on minorities were enacted decades ago for non-discriminatory purposes. Attributing the failure of city officials to grant a variance or rezone to racial animus may be extremely difficult, even in instances where the illegal motive exists. Isolated statements by ill-advised officials may be insufficient to hold the city liable. Furthermore, as I described in Part II, land use decisions that harm the inner city poor can easily and persuasively be justified on racially neutral grounds such as preserving a community's tax base or "community character."

A more useful tool for challenging exclusionary zoning practices is Title VIII of the Civil Rights Act of 1968, commonly called the Fair Housing Act.¹⁷⁹ The Fair Housing Act provides, in part, that "it shall be unlawful . . . [t]o make unavailable or deny . . . a dwelling to any person because of race, color, religion, or national origin."¹⁸⁰ Federal courts have interpreted this language to apply to local zoning actions that obstruct the construction of low cost housing when the absence of the housing would disproportionately harm blacks.¹⁸¹ Although the Supreme Court has never ruled on the matter, federal appellate courts have also held that Title VIII permits a plaintiff to obtain relief even though he is unable to prove discriminatory intent. Instead, the plaintiff must prove a *prima facie* case in which he shows that the effect of the municipality's

177. See *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 517 F.2d 409, 413-15 (7th Cir. 1975), *rev'd*, 429 U.S. 252 (1977).

178. *Arlington Heights*, 429 U.S. at 265. See also *Washington v. Davis*, 426 U.S. 229 (1976) (disproportionate impact insufficient to prove violation of Equal Protection Clause).

179. 42 U.S.C. §§ 3601-3619, 3631, *as amended by* Pub. L. No. 100-430, 102 Stat. 1619 (1988).

180. 42 U.S.C. § 3601(a) (1988). The Fair Housing Act was amended in 1988 to protect handicapped individuals and families with children under the age of 18. See Fair Housing Act, Pub. L. No. 100-430, 102 Stat. 1619 (1988).

181. See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir.), *aff'd*, 488 U.S. 15 (1988); *Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975).

refusal to rezone or grant a variance disproportionately affects groups protected by the statute including racial minorities.¹⁸² Once the plaintiff proves a prima facie case of discriminatory effect the burden shifts to the defendant to show that its zoning decision was motivated by legitimate, non-racial concerns and that no less discriminatory alternative exists.¹⁸³

The recent case of *Huntington Branch NAACP v. Town of Huntington*¹⁸⁴ illustrates how the Fair Housing Act can be utilized to break down exclusionary zoning. Huntington is a town on Long Island whose population is 95% white. Most of the blacks in the community are concentrated in two neighborhoods, the only locations in the town zoned for multi-family housing. A developer of subsidized housing obtained an option to purchase a parcel of land in a white section of the municipality on which he planned to build a 162 unit housing project. The developer petitioned the town for a rezoning which was refused. The town based its rejection of the rezoning petition upon a number of concerns including transportation problems, potential disruption of residential neighborhoods and the siphoning off of demand for housing in the town's urban renewal area. The Court of Appeals for the Second Circuit found that the town's refusal to rezone had a racially discriminatory effect since it would disproportionately harm blacks and would reinforce segregative patterns in the community.¹⁸⁵ The court then determined that the reasons offered by the town for its decision were insufficient to outweigh the discriminatory effect of its refusal to rezone. The court granted injunctive relief ordering the town to rezone the land so that the developer could build the housing project. The court also struck the provision in the zoning ordinance that limited multi-family housing to the urban renewal area.

Despite *Huntington*, challenges to suburban zoning ordinances

182. See *Huntington*, 844 F.2d at 939; *Black Jack*, 508 F.2d at 1184. *But cf. Arlington Heights*, 558 F.2d at 1290 (prima facie case includes four factors: (1) the strength of the plaintiff's showing of discriminatory effect; (2) the existence of discriminatory intent, though not enough to satisfy Equal Protection requirements; (3) the defendant's interest in taking the action complained of; and (4) whether the plaintiff seeks to compel the defendant to affirmatively provide housing or merely restrain it from interfering with the provision of housing by the private sector).

Title VIII has also been used to attack zoning ordinances on the ground that they discriminate against those with physical or mental handicaps. See, e.g., *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991) (challenging denial of special permit for group home for substance abusers); *Devereux Foundation v. O'Donnell*, No. 89-6134, 1991 U.S. Dist LEXIS 3188 (E.D. Pa. Mar. 14, 1991) (zoning ordinance discriminated against mentally handicapped).

183. See *Huntington*, 844 F.2d at 939; *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 149 (3d Cir. 1977). The Eighth Circuit requires that once the plaintiff establishes the prima facie case of discriminatory effect, a defendant must prove its actions were necessary to promote a compelling governmental interest. See *Black Jack*, 508 F.2d at 1185.

184. 844 F.2d 926 (2d Cir.), *aff'd*, 488 U.S. 15 (1988).

185. See *id.* at 938.

under federal law are somewhat limited. Title VIII does not apply to discrimination against low income households; instead it is limited to protecting particular groups such as racial minorities. Nevertheless, since metropolitan areas with the greatest amount of concentrated poverty are also likely to have inner cities disproportionately composed of blacks or Hispanics, the scope of the Act is unlikely to prove too much of a problem to deconcentration. Challenges under the Fair Housing Act, however, are likely to be time-consuming and expensive. As the Second Circuit indicated in *Huntington*, federal appellate courts do not usually fashion the type of sweeping remedy that it ordered. Instead of ordering a rezoning and invalidating the town's restriction on multi-family housing, the usual case will involve a remand to the trial court to weigh alternative sites.¹⁸⁶ Remedies usually will be limited to one development in one jurisdiction rather than wholesale changes in zoning ordinances.¹⁸⁷

For suburbs that have not been found to have engaged in discriminatory activities, federal law restricts the power of federal courts to require them to participate in efforts to deconcentrate the ghetto, even in instances where the central city or other suburbs have been found liable for discriminatory practices and an effective remedy would be impossible without the "innocent" suburbs' participation. In *Milliken v. Bradley*,¹⁸⁸ the Supreme Court overturned a district court's remedy in a school desegregation case against the Detroit Board of Education and state officials. The district court had found that Detroit school officials intentionally fostered a segregated school system. The court also found the state officials vicariously liable for the actions of the Detroit Board of Education as well as for their own actions or inaction in promoting a segregated system.¹⁸⁹ The court ordered a desegregation plan that would

186. *See id.* at 941-42. The court determined that the case was not ordinary because of the protracted nature of the litigation and the absence of good faith on the part of the town. *See id.* at 941.

187. Recent Supreme Court doctrine in the employment discrimination area may also limit the utility of Title VIII. In *Wards Cove Packing Co., Inc. v. Atonio*, 490 U.S. 642 (1989), the Court ruled that once a plaintiff proves a prima facie case that an employment practice has a discriminatory effect, the burden of rebutting the prima facie case, does not, as prior law seemed to indicate, shift to the defendant. Instead, the plaintiff retains the burden of persuasion throughout. *See id.* at 659. The holding in *Wards Cove* with respect to employment discrimination cases has been overturned by Congress in the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, 1074 (1991). Nevertheless, the Supreme Court may apply the same analysis it used in *Wards Cove* to cases brought under the Fair Housing Act. No federal court has yet applied the *Wards Cove* holding on disparate impact to Title VIII cases, yet the fact that much of Title VIII doctrine has relied on Title VII cases suggests that the case may have an effect on housing litigation. *Cf. Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1533 (7th Cir. 1990) (implying that *Wards Cove* may have altered Title VIII disparate impact test).

188. 418 U.S. 717 (1974).

189. These actions included failing to fund pupil transportation, permitting a neighboring school

have involved 54 school districts, none of which, with the exception of Detroit, had been found liable for discrimination. According to the court, any less comprehensive remedy would result in an all black school system surrounded by all white districts.

The Supreme Court overturned the district court's remedy. Based in part on the values of local autonomy, the Court ruled that:

Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a Constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation.¹⁹⁰

According to the Court, no evidence indicated that the suburban school districts had independently contributed to the segregation in Detroit. Furthermore, the Court observed that in only one isolated instance were the state's actions implicated in affecting the racial composition of schools outside of Detroit. Therefore, since it did not find a violation in one district that produced a significant segregative effect in another district, the Court ruled that the suburban districts could not be forced to participate in the desegregation remedy.

Two years after *Milliken*, however, the Court approved an interdistrict remedy in *Hills v. Gautreaux*.¹⁹¹ In *Gautreaux*, the district court had found the Chicago Housing Authority (CHA) and HUD liable for maintaining segregated public housing in the city of Chicago. The Court of Appeals for the Seventh Circuit overturned the district court's remedy in the case on the ground that it did not include the construction or subsidization of housing units in Chicago's suburbs. The Supreme Court affirmed the appellate court's insistence on an interdistrict remedy and attempted to distinguish *Milliken*. According to the Court, unlike the suburbs in *Milliken*, both HUD and CHA had been adjudged to have violated the law. The remedy, although affecting areas beyond the municipal boundaries where the segregative violations had occurred, would "not necessarily entail coercion of uninvolved governmental units. . . ." ¹⁹²

Milliken therefore seems to limit the involuntary participation of

district to send black high school students to Detroit schools and impeding a voluntary desegregation plan. *Id.* at 748-52.

190. *Milliken*, 418 U.S. at 744-45.

191. 425 U.S. 284 (1976).

192. *Id.* at 298.

suburbs in federal metropolitan deconcentration remedies to instances where the suburbs themselves have violated the law¹⁹³ or where the state has used the suburbs to achieve a discriminatory purpose.¹⁹⁴ Suburbs may not be forced to comply with an interdistrict remedy merely because the state has been found to violate the law.¹⁹⁵ This rather curious elevation of local autonomy to a constitutional principle¹⁹⁶ can impede deconcentration efforts and lead to anomalous results such as those in *United States v. Yonkers Board of Education*.¹⁹⁷ In *Yonkers*, the district court found that the city of Yonkers had intentionally promoted a pattern of racial segregation by blocking or limiting the availability of public or subsidized housing in the eastern and northwestern portions of the city. The court-ordered remedy required the city to build 200 units of public housing in white sections of town and develop a long-term plan to create additional subsidized housing opportunities in those areas. Neighboring jurisdictions such as Bronxville and Scarsdale have built little or no low income housing and, through their zoning ordinances, have prevented the private sector from constructing affordable housing within their borders.¹⁹⁸ Under *Milliken*, however, the district court in *Yonkers* was constrained to limit its remedy to further concentrating low income housing in a relatively poor city with declining employment opportunities rather

193. See, e.g. *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 778 F.2d 404 (8th Cir. 1985), cert. denied, 476 U.S. 1186 (1986); *Evans v. Buchanan*, 393 F. Supp. 428 (D. Del.), aff'd, 423 U.S. 963 (1975).

194. See, e.g., *United States v. Board of Sch. Comm'rs*, 637 F.2d 1101 (7th Cir.) (state drew local boundaries with discriminatory purpose), cert. denied sub nom. *Metropolitan Sch. Dist. v. Buckley*, 449 U.S. 838 (1980).

195. See *Lee v. Lee County Bd. of Educ.*, 639 F.2d 1243, 1256 (5th Cir. 1981) ("a federal court cannot impose liability on individual independent school districts on the basis of a general inverse respondeat superior theory holding them presumptively responsible for actions of the state or another governmental entity . . .").

196. A black letter principle of local government law holds that local governments derive their authority from states and, in the absence of state constitutional protections, can be abolished or restructured by states. Cities are viewed as creatures of states, whose powers are to be strictly construed. See 1 JOHN FORREST DILLON, *THE LAW OF MUNICIPAL CORPORATIONS* §§ 55, 111 (2d ed. 1873). Except possibly for their rights in property held in a proprietary capacity for their residents, municipalities are entitled to no independent protection under the United States Constitution. See *Hunter v. Pittsburgh*, 207 U.S. 161 (1907). In *Milliken*, however, the Court treats municipalities as independent of their creator, the state. The suburbs are generally not responsible for the discriminatory acts of the state; the state is not vicariously liable for the illegal acts of its cities. In insulating municipalities from states and vice-versa, the Court neglects to make clear its constitutional source. If local autonomy is the motivating value, the Court's evaluation of the benefits and costs of such a principle is unsatisfying. For thoughtful analyses of local autonomy compare Richard Briffault, *Our Localism: Part II-Localism and Legal Theory*, 90 COLUM. L. REV. 346 (1990) with Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980).

197. 635 F. Supp. 1577 (S.D.N.Y. 1986), aff'd, 837 F.2d 1181 (2d Cir. 1987), cert. denied, 486 U.S. 1055 (1988).

198. See Peter D. Salins, *A Tale of Racism in the Suburbs*, N.Y. TIMES, July 28, 1988, at A27.

than facilitating the movement of the poor to locations of greater opportunity.

2. Integration Maintenance

One of the principal barriers to effective deconcentration of poor, predominantly black households to the suburbs is the destabilizing influence such a population shift would likely have. Opinion polls indicate that the majority of whites would not object to a small number of blacks as neighbors. However, the prospect of large numbers of black neighbors would cause them to oppose the migration and, if unsuccessful, move themselves.¹⁹⁹ Regardless of whether whites are motivated by racism or are using race as a proxy for lower socioeconomic status, to be effective deconcentration efforts must take their views into account. Otherwise, efforts to achieve deconcentration either will be frustrated by community opposition or lead to the exodus of white households and the reproduction of concentrated poverty.

Early proponents of deconcentration recognized that white fears of neighborhood change needed to be accommodated as part of any effort to open up the suburbs. For example, Downs argues that for many suburbs, deconcentration strategies must include devices that would limit the proportion of low and moderate income households entering the community.²⁰⁰ Recent federal court decisions, however, may limit the ability of municipalities or private developers of housing to place numerical ceilings on lower income households because of the disproportionate impact such restrictions would likely have on racial minorities. In *United States v. Starrett City Associates*,²⁰¹ a private developer built a large federally subsidized housing complex in Brooklyn, New York called Starrett City. To avoid "tipping," Starrett City established a set of racial quotas: 64% of the apartments were reserved for whites, 22% for blacks and 8% for Hispanics. In 1979 a group of black applicants challenged the quotas in federal court. The suit was settled in 1984 with Starrett City agreeing to increase the proportion of minorities over a five year period. Shortly thereafter, the federal government challenged the quota system as violative of the Fair Housing Act.

The Court of Appeals for the Second Circuit affirmed the district court in ruling that although Starrett City may have been motivated by the worthy objective of maintaining integration, its methods violated Ti-

199. See *supra* text accompanying notes 114-15.

200. See Downs, *supra* note 80, at 141.

201. 840 F.2d 1096 (2d Cir.), *cert. denied*, 488 U.S. 946 (1988).

tle VIII. Admitting that a tension exists in the Fair Housing Act between the objectives of integration and non-discrimination,²⁰² the court ruled that race conscious housing plans must be temporary, designed to remedy some history of racial discrimination and should increase the representation of minorities rather than set a ceiling on their admission.²⁰³ The court found that Starrett City's integration maintenance scheme violated each of these guidelines.²⁰⁴ If ceilings on the number of low income households were explicitly or implicitly adopted by suburbs²⁰⁵ so as to discourage the flight of middle and upper income households, it is likely that the restrictions would be challenged under the Fair Housing Act. On their face, the ceilings would be racially neutral, and therefore distinguishable from the quotas at issue in *Starrett City*. Nevertheless, the restrictions might be subjected to similar treatment on the ground that they disproportionately burden racial minorities.²⁰⁶

A second approach to integration maintenance does not seek to limit directly the influx of nonwhite households into suburban neighborhoods, but instead tries to prevent white households from leaving stable communities because of their fears of racial transition. Most recent integration maintenance ordinances of this type are designed to counter the practice of "blockbusting." Blockbusting typically involves the solicitation of white homeowners by real estate brokers. The brokers unnerve the homeowners with reports that blacks are moving into the neighborhood and predictions that property values will soon fall. The whites sell their homes at depressed prices to real estate entrepreneurs who, in turn, sell them to black families at market or above-market prices. In the process, neighborhood racial composition is rapidly transformed.²⁰⁷

The most popular integration maintenance measures—prohibitions on "For Sale" signs and anti-solicitation ordinances²⁰⁸—have met with

202. See *id.* at 1101.

203. See *id.* at 1101-02. The court distinguished an earlier case in which it had approved of preferential treatment accorded to whites in gaining access to a new public housing project. See *Otero v. New York City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973). According to the court, the integration maintenance mechanism at issue in *Otero* was limited to the initial rent-up of the new project and did not operate as a strict quota. See *Starrett City*, 840 F.2d at 1103.

204. See also *United States v. Charlottesville Redevelopment and Hous. Auth.*, 718 F. Supp. 461, 469-70 (W.D. Va. 1989) (Public housing authority may not give preferential treatment to whites to maintain a 50/50 mix of black and white residents.).

205. Communities might explicitly restrict the number of low income households or, more likely, set implicit limits by limited relaxation of zoning regulations or the allocation of limited amounts of housing subsidies.

206. See *supra* text accompanying notes 179-83 (Fair Housing Act plaintiffs need not prove discriminatory intent.).

207. For a recent description of blockbusting in Long Island see Michael Alexander, *Housing Split: No End to Trend*, NEWSDAY, Sept. 24, 1990, at 7.

208. In addition, municipalities promote affirmative marketing of neighborhoods to various ra-

mixed success in federal courts. In 1974, the township of Willingboro, New Jersey enacted a ban on "For Sale" signs to halt "panic selling" on the part of whites in response to an influx of minority households. The Supreme Court struck down the ordinance in *Linmark Associates v. Township of Willingboro*,²⁰⁹ on the ground that it violated the first amendment guarantee of free speech. The Court held that the sign ban was not merely a regulation of the time, place or manner of speech, but also was concerned with the content of the speech itself. Although the Court acknowledged the importance of the town's objective of promoting a stable, racially integrated community, it held that the first amendment prohibited the restriction of information about matters of vital interest to Willingboro residents.²¹⁰ Less restrictive sign regulations such as those limiting the size or number of "For Sale" signs on a property, however, have been upheld by federal courts.²¹¹

Municipalities have also attempted to fight blockbusting by restricting the ability of real estate brokers to solicit homeowners about selling their properties. Although federal courts have invalidated broad solicitation bans,²¹² a recent decision of the Court of Appeals for the Seventh Circuit upheld more narrowly drawn ordinances. In *South Suburban Housing Center v. Greater South Suburban Board of Realtors*,²¹³ several communities in the Chicago metropolitan area enacted laws that prohibited the solicitation of homeowners to sell or rent their dwellings if the homeowners had notified town officials that they did not wish to be solicited. The court upheld the ordinance in the face of challenges by local realtors on Fair Housing Act and first amendment grounds. The court found that the ordinance would have no racially discriminatory effect since those families barred from receiving solicitations were those who would be least likely to offer their homes for sale.²¹⁴ The ordinances did

cial groups so as to maintain racial balance. For a description of integration maintenance techniques see JULIET SALTMAN, *A FRAGILE MOVEMENT: THE STRUGGLE FOR NEIGHBORHOOD STABILIZATION* (1990). A recent study by Galster of integration maintenance programs in the Cleveland metropolitan area concludes that these programs may exacerbate the problem they are designed to solve. Galster reports that white flight was higher in communities with integration maintenance programs than it was in other nearby communities. See George C. Galster, *White Flight from Racially Integrated Neighbourhoods in the 1970s: the Cleveland Experience*, 27 *URB. STUDIES* 385, 395 (1990).

209. 431 U.S. 85 (1977).

210. See *id.* at 96. The Court also expressed its skepticism that the law was necessary to achieve the objective of integration. See *id.* at 95-96.

211. See, e.g., *South Suburban Hous. Ctr. v. Greater S. Suburban Bd. of Realtors*, 935 F.2d 868 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 971 (1992).

212. See, e.g., *Greater Baltimore Bd. of Realtors, Inc. v. Baltimore County*, 752 F. Supp. 193 (D. Md. 1990) (prohibitions on canvassing potential home sellers struck down as violations of the first amendment).

213. 935 F.2d 868 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 971 (1992).

214. See *id.* at 888.

not violate the first amendment, because although commercial speech is entitled to protection under the Constitution, the anti-solicitation laws directly advanced an important governmental interest and were not more extensive than necessary to serve that purpose. Interestingly, the court characterized the governmental interest as protecting the privacy of local residents rather than promoting integration.²¹⁵

B. State Law

In recent years, a small number of state courts and legislatures have taken an active role in redressing inequities among municipalities. In this section, I examine two areas of legal development that potentially affect the movement of poor households from cities to suburbs. Since the late 1960s, a handful of state courts and legislatures have acted to curb the exclusionary zoning practices of suburbs and facilitate the construction of low cost housing. To date, the quantity of housing constructed as a result of these efforts is quite small. Courts and legislatures have been much more active in redressing disparities among municipalities in the amount of resources available to fund education. Although tax base equalization may, at first glance, appear to be an urban enrichment strategy, it is quite conceivable that, in the long run, it will facilitate deconcentration by reducing the incentives of suburban residents to zone out lower income households and by providing additional incentives for the poor to migrate to the suburbs.

1. Exclusionary Zoning

State legislative efforts to increase low and moderate income housing in the suburbs have had extremely limited success. One of the earliest legislative initiatives was the creation in the late 1960s of New York's Urban Development Corporation (UDC). The UDC's mission was to build low and moderate income housing. The legislation creating the corporation gave it the power to override local zoning ordinances. Initially, the UDC successfully constructed subsidized housing in several cities. Once the UDC began constructing subsidized housing in the suburbs, however, not even the popularity of its chief patron, Governor Nel-

215. See *id.* at 890-95. See also *Curtis v. Thompson*, 840 F.2d 1291 (7th Cir. 1988) (upholding state anti-solicitation regulation similar to those of Chicago suburbs in *South Suburban Housing Center*). In *South Suburban Housing Center*, the Seventh Circuit also upheld an affirmative marketing plan under which brokers for certain homes were required to follow special outreach activities to attract white homebuyers. The court held that the plan did not violate the Fair Housing Act because it did not deter black homebuyers, but merely increased competition in the housing market. See *South Suburban Hous. Ctr.*, 935 F.2d at 883-84.

son Rockefeller, could save it from angry state legislators. In 1973, the legislature stripped the UDC of its power to override local zoning and empowered localities to veto proposed residential developments.²¹⁶ After having its powers limited, the UDC, for the most part, ceased its housing operations in the suburbs.

California and Massachusetts have also enacted laws to promote the construction of affordable housing in suburban locations. In California, municipalities are required to estimate their fair share of regional housing needs and develop plans to provide the housing.²¹⁷ The statute also restricts the freedom of municipalities to disapprove housing developments affordable to low and moderate income households.²¹⁸ In Massachusetts, a state agency has been given the authority to override local land use decisions that impede low income housing construction where the decisions are not "reasonable in view of the regional need for low and moderate income housing. . . ."²¹⁹ Neither of these statutes has been very effective in increasing suburban low income housing opportunities. The California statute requires planning for regional housing needs, but contains no enforcement mechanism if the plans do not successfully lead to housing construction.²²⁰ The Massachusetts law only authorizes zoning overrides if the developer of the proposed housing is a non-profit sponsor or a state agency.²²¹ Furthermore, if ten percent of the housing in a locality is already affordable to low and moderate income households, the state may not override its land use regulations regardless of the magnitude of regional need.²²²

In the face of legislative inaction, a small number of state courts have acted to break down the barriers imposed by exclusionary zoning.²²³ State courts in California, New Hampshire, New Jersey, New

216. See MICHAEL N. DANIELSON, *THE POLITICS OF EXCLUSION* 320-21 (1976).

217. See CAL. GOV'T CODE § 65583 (West 1983 & Supp. 1991).

218. Nevertheless, the statute provides numerous conditions under which municipalities may disapprove housing developments. Among the most important are situations where the proposed project would have an adverse impact on the public health or safety (which cannot be remedied or mitigated without rendering the project unaffordable) and instances where the proposed development is inconsistent with the jurisdiction's general plan land use designation. See CAL. GOV'T CODE § 65589.5 (West Supp. 1991).

219. MASS. ANN. LAWS ch. 40B, §§ 20, 23 (Law. Co-op 1983 & Supp. 1991).

220. The legislation seems to rely on private enforcement. The statute provides that if any municipality is sued for denying approval of a housing project or imposing restrictions which have a substantial adverse effect on the viability of the project, the municipality would have the burden of proving that its actions were consistent with the statute's legislative findings. See CAL. GOV'T CODE § 65589.5(i) (West Supp. 1991).

221. MASS. ANN. LAWS ch. 40B, § 21 (Law. Co-op 1983 & Supp. 1991).

222. MASS. ANN. LAWS ch. 40B, § 20. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 69 (1990).

223. Restrictive zoning ordinances have also been invalidated by some state courts as impairing

York and Pennsylvania have stated explicitly that municipal zoning ordinances must take into account the welfare of people living outside their borders.²²⁴ In each of these states, courts have held zoning ordinances of individual municipalities unconstitutional as applied to particular proposed developments. For example, in *Surrick v. Zoning Hearing Board*,²²⁵ a developer proposed to build apartments and townhouses in Upper Providence Township, a suburb of Philadelphia. The land the developer owned was zoned for single family dwellings on one acre lots. Upon having his requests for rezoning and a variance rejected by township officials, the developer brought suit challenging the local zoning ordinance. The Pennsylvania Supreme Court reversed lower court rulings in favor of the township and invalidated the ordinance. The court explicitly restated its "fair share" principle, "which requires local political units to plan for and provide land-use regulations which meet the legitimate needs of all categories of people who may desire to live within its boundaries."²²⁶ The court determined that the township did not fulfill its fair share responsibility because the municipality was a logical area for population growth and development, but had a zoning ordinance that permitted multi-family dwellings on only 1.14% of the township's land.²²⁷

the property rights of landowners. See, e.g., *Corrigan v. City of Scottsdale*, 720 P.2d 528 (Ariz. App. Ct. 1985), *aff'd*, 720 P.2d 513 (Ariz. 1986) (Placement of 74% of parcel in conservation district effected a taking.); *Burrows v. City of Keene*, 432 A.2d 15 (N.H. 1981) (Placement of land in conservation district constituted a compensable taking.); *LaSalle Nat'l Bank v. City of Chicago*, 125 N.E.2d 609 (Ill. 1955) (Zoning amendment that made it impossible to build a ten story apartment building was not sufficiently related to the general welfare and imposed substantial financial hardships on the owner.). Some state courts also scrutinize carefully attempts by municipalities to impose costly exactions on developers proposing to subdivide land. See, e.g., *Lafferty v. Payson City*, 642 P.2d 376, 378 (Utah 1982) (invalidating impact fee); *Pioneer Trust & Sav. Bank v. Village of Mt. Prospect*, 176 N.E.2d 799, 802 (Ill. 1961) ("If the requirement is within the statutory grant of power to the municipality and if the burden cast upon the subdivision is specifically and uniquely attributable to his activity, then the requirement is permissible. . .").

224. See *Associated Home Builders of Greater Eastbay, Inc. v. City of Livermore*, 557 P.2d 473, 487 (Cal. 1976); *Britton v. Town of Chester*, 595 A.2d 492, 496 (N.H. 1991); *Southern Burlington County NAACP v. Township of Mount Laurel*, 336 A.2d 713, 727-28 (N.J.), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975); *Berenson v. Town of New Castle*, 341 N.E.2d 236, 242 (N.Y. 1975); *National Land Investment Co. v. Kohn*, 215 A.2d 597, 612 (Pa. 1965).

225. 382 A.2d 105 (Pa. 1977).

226. 382 A.2d at 108.

227. 382 A.2d at 111-12. For a discussion of recent developments in Pennsylvania law with respect to the *Surrick* doctrine see CHARLES M. HAAR & MICHAEL A. WOLF, *LAND-USE PLANNING* 411-13 (4th ed. 1989). Roisman and Tegeler have argued that Pennsylvania court rulings have not been particularly helpful in increasing low income housing opportunities because they focus on the exclusion of particular types of housing rather than housing for low income groups. See Florence W. Roisman & Philip Tegeler, *Improving and Expanding Housing Opportunities for Poor People of Color: Recent Developments in Federal and State Courts*, 24 CLEARINGHOUSE REV. 312, 345 (1990). This criticism, however, is not convincing. New construction of market-rate housing should, in the long run, increase housing opportunities for low income households due to filtering. See *supra* text accompanying note 84. Programs geared explicitly to increasing low income housing

To date, only the New Jersey Supreme Court has ordered a systematic revamping of municipal zoning practices as a response to the problem of exclusionary zoning.²²⁸ In its 1975 decision, *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel I)²²⁹ the court invalidated the zoning ordinance of Mount Laurel and set forth a requirement that every developing municipality:

must, by its land use regulations, presumptively make realistically possible an appropriate variety and choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low and moderate income housing and in its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need therefor.²³⁰

Mount Laurel I was the first and thus far only exclusionary zoning decision of a state supreme court to explicitly adopt the spatial mismatch hypothesis and embrace the principle of deconcentration. The court observed that industry and retail businesses had left the cities creating increased unemployment and a decline in city services:

[L]ow income employees very frequently could not afford to reach outlying places of suitable employment and they certainly could not afford the permissible housing near such locations. . . . This category of city dwellers desperately needs much better housing and living conditions than is available to them now, both in a rehabilitated city and in outlying municipalities.²³¹

The court's remedy in *Mount Laurel I* was to order the township to revise its zoning ordinance in accordance with the decision. Eight years later, however, the court once again addressed exclusionary zoning in *Southern Burlington County NAACP v. Township of Mount Laurel* (Mount Laurel II).²³² In *Mount Laurel II*, the court expressed its frustration that Mount Laurel and other municipalities in New Jersey had

such as inclusionary zoning, may, to the contrary, reduce housing opportunities for the poor by dampening new construction. See Ellickson, *supra* note 112, at 151-55. *But cf.* Jeffrey I. Rubin & Joseph Seneca, *Density Bonuses, Exactions, and the Supply of Affordable Housing*, 30 J. URB. ECON. 208, 221 (1991) (Density bonuses and exactions may increase the supply of affordable housing and improve economic welfare.).

228. Other state courts engage in a case-by-case analysis of zoning laws to determine whether they promote the general welfare. See, e.g., *Britton*, 595 A.2d at 498 (Once a court finds a zoning ordinance invalid on the ground that it excludes low and moderate income housing, plaintiff has the burden of showing that its proposed use is reasonable.); *Suffolk Hous. Serv. v. Town of Brookhaven*, 511 N.E.2d 67, 70 (N.Y. 1987) (discussing particularized approach based on individual parcels or projects). Case-by-case approaches to zoning reform are expensive and time-consuming and may be one reason why exclusionary zoning has been relatively unaffected by litigation in these states. See Briffault, *supra* note 222, at 45-46.

229. 336 A.2d 713 (N.J.), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975).

230. 336 A.2d at 724.

231. *Id.*

232. 456 A.2d 390 (N.J. 1983).

not relaxed their land use regulations to make possible the construction of low and moderate income housing. The court reiterated its deconcentration objective²³³ and strengthened its earlier decision in *Mount Laurel I*, extending the obligation to provide housing to all municipalities.²³⁴ It would no longer be sufficient for municipalities merely to reduce barriers to low-cost housing; in the future they would also be required to undertake affirmative measures to create such housing, including assisting developers in obtaining public subsidies and adopting inclusionary zoning techniques.²³⁵ Perhaps most importantly, the court established the concept of the builder's remedy: If a developer proposing to build housing that included a substantial²³⁶ number of units affordable to lower income households could show that a municipality had not met its fair share obligation, a court should ordinarily order the municipality to permit construction of both the market- and below market-rate housing.²³⁷

Mount Laurel II set off an explosion of controversy in New Jersey communities. The builder's remedy, in particular, threatened the ability of communities to control their growth since a successful developer would not only be able to construct low-cost units, but would also be able to construct up to four times as many market-rate homes. Given the booming housing market in the mid-1980s, litigation swelled as developers proposed housing developments and increased housing for moderate income households appeared close to becoming a reality.²³⁸ In response to this controversy, the New Jersey legislature enacted the Fair Housing Act of 1985,²³⁹ upheld by the Supreme Court in *Hills Development Co. v. Township of Bernards* (Mount Laurel III).²⁴⁰ The Act established the

233. 456 A.2d at 415-16 & n.5.

234. The court exempted from the fair share obligation parts of the state that were not designated in the State Development Guidance Plan as "growth areas" and environmentally sensitive areas such as the Pinelands. 456 A.2d at 429-35.

235. 456 A.2d at 442-50. Among the inclusionary zoning techniques specifically mentioned by the court were incentive zoning and mandatory set-asides. Incentive zoning would permit developers to build at higher densities than the zoning ordinance would ordinarily allow provided that they also constructed some housing for low and moderate income households. Mandatory set-asides would require developers of market-rate housing also to build a certain number of subsidized or below market-rate housing units. For a thoughtful critique of inclusionary zoning programs see Ellickson, *supra* note 112, at 148-66.

236. The court observed that a substantial number of lower income units appeared to be 20% of the project. See 456 A.2d at 452 n.37.

237. 456 A.2d at 452-53.

238. Most housing constructed under the *Mount Laurel* rulings is not, however, affordable by poor families. See Martha Lamar et al., *Mount Laurel At Work: Affordable Housing In New Jersey, 1983-1988*, 41 RUTGERS L. REV. 1197, 1214-15 (1989) (Survey of 54 municipalities shows 2,830 units of housing have been completed, but most units affordable to low income households are for the elderly.).

239. N.J. STAT. ANN. §§ 52:27D-301 to D-329 (West 1986 & Supp. 1991).

240. 510 A.2d 621 (N.J. 1986).

Council on Affordable Housing (COAH) whose purpose is to develop fair share requirements for individual municipalities and to certify whether a locality's plan makes "the achievement of the municipality's fair share of low and moderate income housing realistically possible"241 The Act establishes a moratorium on the controversial builder's remedy and transferred all pending *Mount Laurel* litigation to COAH. The Act also permits a municipality to transfer to another city up to one half of its *Mount Laurel* housing obligation provided that the two municipalities consummate a "regional contribution agreement" establishing an appropriate amount of compensation for the receiving jurisdiction. In upholding the Fair Housing Act, the New Jersey Supreme Court expressed relief that the legislature had finally taken action in response to the *Mount Laurel* cases. The court also predicted that most municipalities would apply to COAH for approval of their fair share housing plans because certification would substantially insulate them from further *Mount Laurel* litigation.²⁴²

In *Mount Laurel III*, the court failed to address and therefore implicitly endorsed a change in direction implemented by the state legislature. Deconcentration and the reduction of exclusionary zoning are no longer the primary objectives of New Jersey law in this area. Through the concept of regional contribution agreements, the legislature, with the approval of the court, has placed enrichment on an equal footing with deconcentration. Although regional contribution agreements may improve housing conditions for inner city poor households, they will do little to increase employment opportunities or alleviate the social problems associated with concentrated poverty.²⁴³

2. Education Finance Reform

Compared to their efforts to relax exclusionary zoning, state courts and legislators have been considerably more active in revising the way public education is financed in the United States. Primary and secondary

241. N.J. STAT. ANN. § 52:27D-314 (West 1986 & Supp. 1991).

242. This expectation may have been a bit optimistic. As of May 16, 1990, COAH had certified the fair share plans of only 98 of New Jersey's 567 municipalities. See 98 *Towns Receive COAH Approval*, 5 COUNCIL ON AFFORDABLE HOUSING NEWSL. 1 (1990).

243. Fischel has suggested that a fair share approach such as the one initially adopted by the New Jersey Supreme Court in *Mount Laurel I* and *Mount Laurel II* may actually exacerbate the shortage of affordable suburban housing. He predicts that municipalities will be tempted to adopt stringent growth controls so as to avoid any obligation to provide additional units once their initial fair share requirement is fulfilled. Reduced housing construction would limit the number of units eventually available to the poor through filtering. See William A. Fischel, *Exclusionary Zoning and Growth Controls: A Comment On the APA's Endorsement of the Mount Laurel Doctrine*, 40 WASH. U. J. URB. & CONTEMP. L. 65, 70-72 (1991).

education is the largest single expenditure for most localities. Since a municipality's share of the cost of operating public schools is typically financed through the property tax, inequities exist with respect to the resources available to children in different districts. In districts with large quantities of valuable real estate or relatively small alternative public service needs, the resources available to fund education are much greater than for districts with little property wealth or high service requirements. In *San Antonio Independent School District v. Rodriguez*,²⁴⁴ the Supreme Court held that a property tax-based system of school finance did not violate the United States Constitution even though it generated unequal expenditures among districts.²⁴⁵

Ten state courts, however, have held that their states' systems of financing education violate state constitutional articles guaranteeing equal protection or the efficient provision of education.²⁴⁶ In one of the earliest school finance decisions, *Serrano v. Priest*,²⁴⁷ a group of Los Angeles school children and their parents challenged California's system of education finance on the ground that its reliance on local property tax bases violated the Equal Protection Clause of the state constitution. The court observed that under the California Constitution, education is a fundamental interest and discrimination in educational opportunity based upon district wealth involved a suspect classification.²⁴⁸ The court held that the state's reliance on local tax bases generated substantial disparities in educational opportunities for students living in different parts of California. The state's justification for these disparities, the desirability of local control over fiscal and educational matters, was insufficient to

244. 411 U.S. 1 (1973).

245. 411 U.S. at 54-55.

246. See *DuPree v. Alma Sch. Dist. No. 30*, 651 S.W.2d 90, 93 (Ark. 1983); *Serrano v. Priest*, 557 P.2d 929, 958 (Cal. 1976) (en banc), cert. denied, 432 U.S. 907 (1977); *Horton v. Meskill*, 376 A.2d 359, 374 (Conn. 1977); *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186, 215 (Ky. 1989); *Helena Elementary Sch. Dist. No. 1 v. State*, 769 P.2d 684, 690 (Mont. 1989); *Abbott v. Burke*, 575 A.2d 359 (N.J. 1990); *Edgewood Indep. School Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989); *Seattle Sch. Dist. No. 1 v. State*, 585 P.2d 71, 98 (Wash. 1978) (en banc); *Pauley v. Kelly*, 255 S.E.2d 859, 878 (W. Va. 1979); *Washakie County Sch. Dist. No. 1 v. Herschler*, 606 P.2d 310, 333 (Wyo.), cert. denied, 449 U.S. 824 (1980). Courts in fourteen states, however, have upheld their states' school finance statutes. See, e.g., *Lujan v. Colorado State Bd. of Educ.*, 649 P.2d 1005, 1011 (Colo. 1982) (en banc); *Board of Educ. v. Nyquist*, 439 N.E.2d 359, 370 (N.Y. 1982), appeal dismissed, 459 U.S. 1138 (1983). For a full list of the decisions upholding school finance statutes, see Briffault, *supra* note 222, at 25 n.80. At present twenty states are facing court challenges to their school finance laws. See *Rorie Sherman, Tackling Education Financing: Lawmakers and Courts Battle Over Disparities Among School Districts*, NAT'L L.J., July 22, 1991, at 1.

247. 557 P.2d 929 (Cal. 1976) (en banc), cert. denied, 432 U.S. 907 (1977).

248. 557 P.2d at 951. See also *Serrano v. Priest*, 487 P.2d 1241, 1250-59 (Cal. 1971) (District wealth and wealth of residents is a suspect classification and education is a fundamental interest.).

meet the stringent strict scrutiny standard applied by the court.²⁴⁹

In a more recent decision, *Abbott v. Burke*,²⁵⁰ the New Jersey Supreme Court struck down a school finance statute passed in response to the court's 1973 decision holding an earlier school finance law unconstitutional.²⁵¹ The court held that as applied to poorer urban school districts, the new statute violated the state constitutional guarantee of a "thorough and efficient education." According to the court, a thorough and efficient education in these poorer urban districts requires that the state "assure that their educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts, and that, in addition, their special disadvantages must be addressed."²⁵²

In response to court challenges as well as on their own initiative, many state legislatures have adopted legislation to equalize the disparities among municipalities in educational resources. Some legislatures have guaranteed localities a minimum amount of revenue per student. Other statutes attempt to equalize fiscal capacity among jurisdictions by guaranteeing minimum tax bases. Localities are free to set their own tax rates. If the revenue generated by applying the chosen tax rate to the indigenous tax bases is less than the amount that would be obtained by applying it to the state-guaranteed tax base, the state would pay the district the difference up to a maximum amount. Districts that generate tax revenue in excess of the amount that would be obtained by applying their tax rates to the state-guaranteed minimum tax base either do not receive additional state funds or must pay the difference to the state. A third strategy adopted by several states is to target financial assistance to those districts with especially high needs.²⁵³

In those instances where school finance reform is fashioned to alleviate disparities between poor central city and wealthy suburban districts,²⁵⁴ equalization is usually thought of as an enrichment strategy for the inner city. Additional resources for inner city schools will, at least in theory, enable hard-pressed urban districts to improve the quality of education.²⁵⁵ However, greater state assistance to central city school dis-

249. "It is accordingly clear that the California public school financing system . . . has not been shown by the state to be necessary to achieve a compelling state interest." 557 P.2d at 953.

250. 575 A.2d 359 (N.J. 1990).

251. See *Robinson v. Cahill*, 303 A.2d 273 (N.J.), cert. denied, 414 U.S. 976 (1973).

252. *Abbott*, 575 A.2d at 408.

253. For a complete discussion of state funding mechanisms see ELCHANAN COHN & TERRY G. GESKE, *THE ECONOMICS OF EDUCATION* 313-29 (3d ed. 1990).

254. See, e.g., *Abbott*, 575 A.2d at 408 (holding that state must assure equivalent expenditures per pupil between poorer urban districts and affluent suburban districts); *Edgewood Independent Sch. Dist. v. Kirby*, 777 S.W.2d 391, 392 (Tex. 1989) (comparing Edgewood to Alamo Heights).

255. See, e.g., *Abbott*, 575 A.2d at 411 (Isolation of the urban poor will continue unless educa-

tricts and equalized tax bases might also promote deconcentration. In those states where cities receive additional funds as a result of school finance reform²⁵⁶ the "tax price" of public education decreases in the city and may increase in the suburbs.²⁵⁷ These positive and negative subsidies would, in theory, be capitalized into property values with the values of city residences increasing and suburban housing decreasing.²⁵⁸ If the city uses the additional revenues at its disposal primarily to increase expenditures on schools or other public services, tenants would probably experience increased rents attributable to greater competition for housing.²⁵⁹

tional deficiencies are addressed.); *Edgewood*, 777 S.W.2d at 393 (Education finance reform will help students to escape "cycle of poverty.").

256. Not all school finance reforms will benefit central cities. Many central cities have large tax bases attributable to industrial and commercial properties. Equalization schemes that redistribute from jurisdictions with high tax bases to low tax bases may actually create a net loss for some central cities. See, e.g., *Serrano v. Priest*, 226 Cal. Rptr. 584, 617-18, *superseded and rev. granted*, 189 Cal. App. 3d 539 (2d Dist. 1986) (Los Angeles school district (Baldwin Park) has enjoyed increase in revenue whereas San Francisco, Oakland and Berkeley districts have suffered losses.). *But cf.* JAMES HEILBRUN, *URBAN ECONOMICS AND PUBLIC POLICY* 432-33 (3d ed. 1987) (The average property value per capita for the largest 26 cities in 1981 was only 72% of the average of their suburbs.).

257. The tax price of education would increase in wealthy suburban districts if the state adopted a power equalization program with recapture. Even if the education finance system did not recapture funds from the suburbs, suburban residents would likely pay more in state taxes to fund state assistance to poor districts.

258. *Cf.* Robert P. Inman, *Optimal Fiscal Reform of Metropolitan Schools: Some Simulation Results*, 68 AM. ECON. REV. 107, 118 (1978) (Simulation indicates that district power equalization would lead to an increased individual tax base in low-base towns and a reduced individual tax base in high-base towns.); Robert P. Inman & Daniel L. Rubinfeld, *The Judicial Pursuit of Local Fiscal Equity*, 92 HARV. L. REV. 1662, 1737 (1979) (*Serrano*-type reform will lead to falling land values in formerly high tax base communities and rising values in those with formerly low tax bases.).

259. States typically provide municipalities several types of educational subsidy including grants earmarked for particular services (categorical grants), block grants and matching grants. Municipalities may substitute the first two categories of subsidy for locally generated funds and use these funds to pay for other public services or to reduce local taxes. However, studies have shown that municipalities use a substantial share of their state aid to augment educational expenditures. See, e.g., David E. Black et al., *Wealth Neutrality and the Demand For Education*, 32 NAT'L TAX J. 157, 161 (1979) (Marginal impact of one dollar of Delaware educational block grants on expenditures is \$0.77 per pupil.); Elchanan Cohn, *Federal and State Grants to Education: Are They Stimulative or Substitutive?*, 6 ECON. EDUC. REV. 339, 343 (1987) (Data show that state aid is at least partially and perhaps fully stimulative.); W. Norton Grubb & Jack W. Osman, *The Causes of School Finance Inequalities: Serrano and the Case of California*, 5 PUB. FIN. Q. 373, 379 (1977) (In California, a \$1.00 increase in general purpose state aid leads to a \$0.78 increase in educational expenditure per pupil.); Helen F. Ladd, *Local Education Expenditures, Fiscal Capacity, and the Composition of the Property Tax Base*, 28 NAT'L TAX J. 145, 150 (1975) (Fifty cents of each dollar in educational aid is spent on education with the rest leading to increased levels of expenditures on other services or tax reductions.). *But see* ROLLA E. PARK & STEPHEN J. CARROLL, *THE SEARCH FOR EQUITY IN SCHOOL FINANCE: MICHIGAN SCHOOL DISTRICT RESPONSE TO A GUARANTEED TAX BASE* 24 (1979) (Six cents and thirty-six cents of each dollar of Michigan general and categorical assistance, respectively, went to increased state educational expenditures.). Equalization assistance now provided in many states is similar to a matching grant. Matching grants typically stimulate even greater levels of additional expenditure than block grants or categorical assistance. See Paul N. Courant et al., *The Stimulative Effects of Intergovernmental Grants: Or Why Money Sticks Where It Hits*, in *FISCAL FEDERALISM AND GRANTS-IN-AID* 5, 5 (Peter Mieszkowski & William Oakland eds., 1979).

In the long-run, redistributive state education subsidies may also generate an offsetting effect to the rent increases attributable to greater competition for housing in the inner city. A portion of the

Poor tenants might not value the increased services attributable to the equalization subsidies as much as the median city voter²⁶⁰ and therefore be made worse off by higher housing costs. This combination of higher housing prices in the city and lower housing costs in the suburbs might make deconcentration marginally more attractive and feasible for inner city residents.²⁶¹

School finance reform may also alter the propensity of suburban residents to oppose deconcentration. Although studies show mixed results with respect to whether state education finance reforms have narrowed the disparities in revenues available to students living in poor and wealthy school districts,²⁶² they have clearly loosened the tie between school finance and the property tax.²⁶³ As the property tax becomes less important as a source of local revenue, one of the primary objections to deconcentration among suburban residents will weaken. As suburban public services are financed to a greater extent by state rather than locally generated revenues, suburban residents should have less of an incentive to exclude housing that will generate tax revenues that do not pay for the service requirements of its occupants.²⁶⁴ Reducing or removing the fiscal incentive behind exclusionary zoning practices will also leave

state aid is likely to be used by the cities to fund tax relief. This will reduce the cost to landlords of operating rental housing. If markets are competitive, tax relief should be passed on to tenants in the form of reduced rents. Some of the short-term effects of reforms such as district power equalization will also be offset by capitalization. As the tax base of the city rises, it will be entitled to correspondingly lower levels of state aid. See Inman & Rubinfeld, *supra* note 258, at 1735 (Changes in family tax bases will undo a substantial share of the gain in spending and tax equity promised by equalization.); Daniel L. Rubinfeld, *Judicial Approaches to Local Public-Sector Equity: An Economic Analysis*, in CURRENT ISSUES IN URBAN ECONOMICS 542, 565 (Peter Mieszkowski & Mahlon Straszheim eds., 1979) (Capitalization will mitigate tendency toward expenditure equality.).

260. Cf. Thomas Bogart & Richard Voith, Property Taxes, Homeownership Capitalization Rates, and Housing Consumption 9-14 (Working Paper No. 91-13, June 1991) (Property tax capitalization is minimized for individuals having income at the seventieth percentile therefore suggesting that the tax and service mix is most highly valued by the median voter weighted by likelihood of voting.).

261. Deconcentration may become less attractive to inner city residents if suburban households respond to reforms such as district power equalization by choosing to fund a very low level of public services and purchasing needed services through the private sector. To avoid such an occurrence the state might have to require minimum tax rates or eliminate any recapture. See COHN & GESKE, *supra* note 253, at 320. In addition, deconcentration might be impeded if the state were to retain the property tax as an important source of revenue and state residents responded to redistributive reforms by enacting tax ceilings such as California's Proposition 13. Under Proposition 13, property assessments can annually increase in excess of 2% only upon the sale of homes. As a result of Proposition 13, tax burdens have been shifted from long time residents to newcomers. See William A. Fischel, *Did Serrano Cause Proposition 13?*, 42 NAT'L TAX J. 465, 472 (1989).

262. For a summary of these empirical studies see COHN & GESKE, *supra* note 253, at 337-45.

263. From 1970 to 1984, the proportion of United States public elementary and secondary school expenditures financed by the states increased from 38.5% to 48.0%. See *id.* at 279.

264. See *supra* text accompanying notes 93-94. However, if suburban jurisdictions gain no fiscal benefits from property within their boundaries, they may cease to permit any new development thereby diminishing opportunities for deconcentration. See FISCHEL, *supra* note 103, at 326-27.

suburbs with fewer lawful justifications for their land use regulations thereby making it easier for plaintiffs to succeed in lawsuits based on the Equal Protection Clause or the Fair Housing Act.²⁶⁵

CONCLUSION

Legal battles over deconcentration reflect the limitations of courts and the unwillingness of legislators to make substantial progress in deconcentrating the ghetto. In addition to racism, suburban households are motivated by rational self-interest in opposing efforts to open their communities to low and moderate income housing. As the *Mount Laurel* rulings illustrate, judicial efforts to force racial and socio-economic integration are bound to meet widespread community opposition, delays and ultimately legislative dilution.

Deconcentration is most likely to succeed if suburban households find that it is not in their interest to block the construction of new housing in their communities with restrictive land use practices. Equalization of tax bases and a greater state role in financing public services such as education may help to create such an environment. Race or class conscious efforts to promote neighborhood stability and ensure suburban residents that their communities will not be transformed into ghettos, no matter how unpalatable, may also be necessary.

Deconcentration clearly will not be costless. Equalized tax bases and an increased state role in the finance of public services will reduce some of the efficiencies associated with a system of decentralized local governments. Nevertheless maintaining the status quo is also not costless whether one's metric is dollars or human anguish. Large numbers of ghetto poor are growing up without hope and without the appropriate education or socialization to contribute productively to society. Although segregating themselves in the suburbs may serve the interests of large numbers of Americans today, the long term costs of doing nothing to alleviate concentrated ghetto poverty are likely to be tremendous.

265. See *supra* text accompanying notes 173-87.

APPENDIX: NEIGHBORHOOD (PROBIT ANALYSIS)

VARIABLE	MODEL 1	MODEL 2	MODEL 3	MODEL 4
CONSTANT	0.727696* (4.428)	0.709465* (4.290)	0.732775* (4.440)	0.713773* (4.297)
SUBDUM	0.312986* (7.712)	0.308520* (7.586)	—	—
WHSUBDUM	—	—	0.307634* (5.859)	0.305600** (5.810)
BLSUBDUM	—	—	0.197218* (2.696)	0.181555** (2.468)
HISUBDUM	—	—	0.541938* (4.958)	0.541540** (4.955)
INCOME	0.000016 (1.120)	0.000015 (1.025)	0.000017 (1.163)	0.000015 (1.068)
INCOMESQ	-0.022037** (-2.129)	-0.021371** (-2.059)	-0.022686** (-2.192)	-0.021997** (-2.120)
RENT	-0.108221** (-2.191)	-0.091110*** (-1.804)	-0.109159** (-2.206)	-0.092442*** (-1.827)
PROJECTS	—	-0.113213** (-2.119)	—	-0.111819** (-2.091)
BLACK	-0.034463 (-0.785)	-0.028468 (-0.647)	-0.017462 (-0.337)	-0.008332 (-0.161)
HISP	0.140777** (2.367)	0.139943** (2.352)	0.070708 (0.981)	0.069763 (0.966)
NE	0.030667 (0.559)	0.033651 (0.612)	0.038093 (0.691)	0.041483 (0.752)
SOUTH	0.096032** (1.984)	0.093044*** (1.918)	0.104925** (2.148)	0.102462** (2.093)
WEST	-0.101346*** (-1.655)	-0.108225*** (-1.763)	-0.108958*** (-1.771)	-0.115645*** (-1.876)
ED0	0.053583 (1.280)	0.056271 (1.340)	0.052164 (1.245)	0.054894 (1.306)
ED2	0.048368 (0.731)	0.040226 (0.603)	0.048030 (0.725)	0.040054 (0.601)
ED3	-0.018676 (-0.194)	-0.022004 (-0.228)	-0.017571 (-0.182)	-0.020493 (-0.213)
CAR	0.091798** (2.185)	0.086200** (2.024)	0.093376** (2.220)	0.088023** (2.063)
SINGLE	-0.176839* (-3.247)	-0.175898* (-3.225)	-0.175805* (-3.218)	-0.174435* (-3.187)
SINGMOM	-0.072595 (-1.217)	-0.062580 (-1.045)	-0.074699 (-1.252)	-0.064748 (-1.081)
KIDS	-0.043468** (-2.255)	-0.043742** (-2.255)	-0.041728** (-2.155)	-0.042006** (-2.156)
AGE	0.010381*** (1.797)	0.011154*** (1.917)	0.010086*** (1.743)	0.010808*** (1.854)
AGESQ	0.000143 (0.258)	0.000100 (0.180)	0.000171 (0.309)	0.000133 (0.239)
TENYRS	-0.012317* (-2.942)	-0.011984* (-2.855)	-0.012301* (-2.927)	-0.011959* (-2.839)
TENYRSQ	0.000170** (2.209)	0.000161** (2.087)	0.000168** (2.183)	0.000159** (2.060)
OBSERVATIONS	3,484	3,469	3,484	3,469

* p < .01
** p < .05

*** p < .10
Note: T statistics are in parentheses.

