

# An Examination of Tiebout Sorting and Residential Segregation Through a Racialized Lens

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## I. INTRODUCTION

In *A Pure Theory of Local Expenditures*, Professor Charles M. Tiebout suggests that membership in local communities—formally incorporated governments located within a state—is based on residents’ neutral market choices of goods and services, such as public school systems and property taxes.<sup>1</sup> This Note argues that, on the contrary, local communities have been, and continue to be, shaped less by migration for packages of services than by voluntary—de facto—racial segregation.<sup>2</sup> Beginning in the late nineteenth century, the land development phenomenon known as “urban sprawl” enabled neighborhoods of whites to move from racially diverse cities to racially homogeneous suburbs with better public goods and services, thereby perpetuating racial socio-economic disparities.<sup>3</sup> Until race relations in the United States becomes amicable, current and future policies resulting in wealth redistribution or promoting heterogeneous communities will only amount to thoughtful ideals, not realistic and effective solutions.

Part II of this Note provides a detailed discussion of Professor

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<sup>1</sup> Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 417-18 (1956). This Note uses the following terms interchangeably when referring to Professor Tiebout’s theory from *A Pure Theory of Local Expenditures*: “Tieboutian world,” “Tieboutian policies,” “Tiebout sorting,” “Tiebout choice” and; “Tiebout preferences.”

<sup>2</sup> De facto segregation is commonly defined as: “Segregation that occurs without state authority.” BLACK’S LAW DICTIONARY 1388 (8th ed. 2004). In contrast, de jure segregation is “permitted by law.” *Id.* De facto segregation was first discussed by the United States Supreme Court in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971). In *Swann*, the Supreme Court explained that de facto segregation is “where racial imbalance exists . . . but with no showing that this was brought about by discriminatory action of state authorities.” *Id.* at 17-18. The Supreme Court articulated the difference between de jure and de facto segregation in *Keyes v. Sch. Dist. No. 1*, 413 U.S. 189, 208 (1973) (“We emphasize that the differentiating factor between de jure segregation and so-called de facto segregation . . . is purpose or intent to segregate.”).

<sup>3</sup> Urban sprawl is American’s outward expansion from urban centers to outlying suburbs. See John A. Powell, *Sprawl, Fragmentation, and the Persistence of Racial Inequality: Limiting Civil Rights by Fragmenting Space*, in URBAN SPRAWL: CAUSES, CONSEQUENCES & POLICY RESPONSES 75-76 (Gregory D. Squires ed., 2002); see also *infra* Part V.A.

Tiebout's thesis and its underpinnings. Part III contends that the residential land development model suggested by Professor Tiebout inherently causes the development of wealth disparities amongst different communities. Part III also argues that the negative societal consequences of wealth segregation outweigh the benefits. Although wealth inequities between whites and blacks living in the United States may lead to residential segregation for the benign reasons hypothesized by Professor Tiebout, Part IV argues that this phenomenon is driven instead by racial biases. Specifically, Part IV discusses current wealth disparities between black and white Americans and outlines findings from three recent empirical studies. Each study concludes that residents of a local community, whom Professor Tiebout refers to as "consumer-voters,"<sup>4</sup> are more concerned with a prospective community's racial composition than the cost, amount, or quality of public goods and services offered to its residents.

Part V provides an historical analysis of white-black race relations to further substantiate the influential role that race plays in the racial composition of local municipalities and neighborhoods. For support, Part V discusses race relations between native white Americans, European immigrants, and blacks at different points in time for the first one hundred years after the end of the Civil War. Part V then explains how urban sprawl, the leading residential land development practice in the United States, operates like a real-world version of Professor Tiebout's model and enables whites to voluntarily segregate themselves from blacks throughout the twentieth century.

Finally, Part VI briefly outlines two theories—regionalism and new regionalism—used by policy makers to implement reforms intended to combat wealth and race inequities that result from urban sprawl. In conclusion, Part VI contends that consumer-voters living in the United States must overcome their racial prejudices in order to successfully implement public and government initiatives that focus on minimizing the malignant consequences of voluntary residential racial segregation.

## II. CHARLES TIEBOUT'S THEORY OF LOCAL EFFICIENCY AND THE CONSUMER-VOTER

In *A Pure Theory of Local Expenditures*, Professor Tiebout suggests that the benefit packages offered by local municipalities are analogous to

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<sup>4</sup> See Tiebout, *supra* note 3, at 417; see also William A. Fischel, *Public Goods and Property Rights: Of Coase, Tiebout, and Just Compensation*, in PROPERTY RIGHTS: COOPERATION, CONFLICT, AND LAW: COOPERATION, CONFLICT, AND LAW 343, 348 (Terry L. Anderson & Fred S. McChesney eds., 2003) [hereinafter Fischel, *Public Goods and Property Rights*] (substituting the term consumer-voters with residents while discussing Professor Tiebout's theory).

products sold in a private market.<sup>5</sup> Residents, who are referred to by Professor Tiebout as “consumer–voters,” are the buyers, and local governments are the sellers of a “spatial economy.”<sup>6</sup> As a result, consumer–voters choose where to reside based on fixed packages of public goods offered by local governments and their ability to pay for the proposed packages.<sup>7</sup> In order to entice new consumer–voters to enter, stay in, or exit a municipality, local governments sell “local public goods,” which are services provided by public entities at set prices through neutral taxation: fire departments, education systems, hospitals and parking facilities.<sup>8</sup>

For the purposes of this Note, public goods are defined as:

[G]oods that will not be produced at all if people are not coerced to pay for them; the market usually does well to prevent the production of goods to the extent that people will not pay for them, but that is because most goods can be produced in different amounts or at different times, in accordance with demand; [public] goods, by definition, are goods that cannot be produced so flexibly. Some [public] goods are not goods in the sense we may be familiar with. They include the elimination of market imperfections, if any, that threaten an uncontrolled market—monopolies, wasteful competition, failures of locational planning, cyclical problems like recessions that *shouldn't* occur, and monetary instability among parts of the economy . . . .<sup>9</sup>

Under this definition, public goods and services are limitless.<sup>10</sup> It

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<sup>5</sup> Tiebout, *supra* note 3, at 417-18.

<sup>6</sup> In defining what a spatial market is and its purpose, Professor Tiebout writes:

Just as the consumer may be visualized as walking to a private market place to buy his goods, the prices of which are set, we place him in the position of walking to a community where the prices (taxes) of community services are set. Both trips take the consumer to market. There is no way in which the consumer can avoid revealing his preferences in a spatial economy. Spatial mobility provides the local public–goods counterpart to the private market’s shopping trip.

*Id.* at 422.

<sup>7</sup> *Id.* at 418.

<sup>8</sup> *Id.*

<sup>9</sup> STEPHEN G. UTZ, TAX POLICY: AN INTRODUCTION AND SURVEY OF THE PRINCIPAL DEBATE 18 (1993); cf. Liam Murphy & Thomas Nagel, *Taxes, Redistribution, and Public Provision*, 30 PHIL. & PUB. AFF. 53, 59 (2001) (providing a more narrow definition for public goods and services: “any good that cannot be supplied to specific individuals, but must be made generally available if it is to be provided at all.”).

<sup>10</sup> Professors Edwin S. Mills and Wallace E. Oates explain:

follows that, if local governments do not provide consumer–voters with satisfactory packages of public goods and services, or over–charge consumer–voters for the packages being offered, then consumer–voters will “vote with their feet”<sup>11</sup> by moving to a community that will satisfy their preferences.<sup>12</sup> Thus, Professor Tiebout’s model posits that a local community’s residential composition is primarily determined by consumer–voter preference or choice.<sup>13</sup>

*A. Tiebout Sorting on Its Face: Decentralization, Localism, Mobility, Managers, and Seven Assumptions*

Professor Tiebout’s model proposes that local governments should control expenditures and the organization of public goods that do not require state or federal support to keep their consumer–voters content and to maintain efficiency.<sup>14</sup> Consequently, competition between local governments will automatically maximize efficiency at the local level without the help of a centralized state or federal regulatory mechanism,<sup>15</sup> much like retailers, manufacturers, and distributors operating in free trade areas.

In addition, Professor Tiebout’s model encourages localism due to the multiplicity of local taxing authorities that spend their revenues on local taxpayers. Localism purports that local communities—formally incorporated governments located within a state—are governed and defined by distinct legal doctrine and cultural ideals.<sup>16</sup> The laws and cultural values particular to a local community are based upon the shared preferences and beliefs of its residents.<sup>17</sup> When Professor Tiebout’s theory was published in 1956, localism was not a new or radical concept to the

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[M]any of the local “services” consumed collectively may have little to do with the public budget, but may depend for example, on the local terrain. It is interesting that Tiebout . . . chose to illustrate his model by a local beach. The point here is that, in a Tiebout world, individuals congregate in communities according to their similarity in preferences for a range of community “characteristics” that they enjoy in common.

Edwin S. Mills & Wallace E. Oates, *The Theory of Local Public Services and Finance: Its Relevance to Urban Fiscal Zoning Behavior*, in *FISCAL ZONING AND LAND USE CONTROLS: THE ECONOMIC ISSUES 7* (Edwin S. Mills & Wallace E. Oates eds., 1975) [hereinafter Mills & Oates, *The Theory of Local Public Services and Finance*].

<sup>11</sup> DANIEL SHAVIRO, *FEDERALISM IN TAXATION: THE CASE FOR GREATER UNIFORMITY* 16 (1993).

<sup>12</sup> Tiebout, *supra* note 3, at 418.

<sup>13</sup> *Id.* at 422.

<sup>14</sup> *Id.* at 418.

<sup>15</sup> *Id.*

<sup>16</sup> See Rick Su, *A Localist Reading of Local Immigration Regulations*, 86 N.C. L. REV. 1619, 1628-32 (2008).

<sup>17</sup> See *id.*

United States.<sup>18</sup> As one tax scholar writes: “The widespread acceptance of localism is attributable in part to tradition . . . . The local tradition reflects not only how Americans view their government, but how they view society.”<sup>19</sup> For example, up until the latter years of the first half of the twentieth century most Americans remained not only “localized,” but isolated from one another until middle- and lower-class individuals were able to afford automobiles.<sup>20</sup>

Furthermore, Professor Tiebout’s model presupposes a society free of politics and bureaucracy.<sup>21</sup> In other words, consumer-voters are not concerned with the political party of their local representatives because the decision to live in a certain jurisdiction depends upon the quality and quantity of packages of public goods and services offered by local governments, not the ideals and policies of government officials and their benefactors.<sup>22</sup> As a result, governments are no longer forced to respond to novel demands of their constituency of consumer-voters because unhappy consumer-voters will simply exit their current community and enter “a community whose local government best satisfies [their] set of preferences.”<sup>23</sup> The costs and content of public goods and service packages offered by local governments are essentially fixed per Professor Tiebout’s model.<sup>24</sup> Since political concerns are nonexistent and tax expenditures and public goods and services per jurisdiction are fixed, consumer-voter mobility is the cornerstone of Professor Tiebout’s model.<sup>25</sup>

In order to maintain or build its populace, local governments need to take consumer-voters’ preferences into consideration.<sup>26</sup> Like sellers in a free market, a local government’s viability is dependent upon its ability to

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<sup>18</sup> See generally DAVID BRUNORI, LOCAL TAX POLICY: A FEDERALIST PERSPECTIVE 15-17 (2d ed. 2007); see also STEVEN R. WEISMAN, THE GREAT TAX WARS: LINCOLN–TEDDY ROOSEVELT–WILSON: HOW THE INCOME TAX TRANSFORMED AMERICA 12-13 (2004) (describing localism in the United States before the Civil War and during the height of the American Industrial Revolution).

<sup>19</sup> BRUNORI, *supra* note 20, at 16.

<sup>20</sup> See, e.g., KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 157-78 (1985).

<sup>21</sup> Tiebout, *supra* note 3, at 417-18; see also Wallace E. Oates, *The Many Faces of the Tiebout Model*, in THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES 21, 29-32 (William A. Fischel ed., 2006) [hereinafter Oates, *The Many Faces of the Tiebout Model*] (discussing the omission of politics and citizen participation from Professor Tiebout’s model).

<sup>22</sup> Tiebout, *supra* note 3, at 417 (“The consumer is, in a sense surrounded by a government whose objective it is to ascertain his wants for public goods and tax him accordingly.”).

<sup>23</sup> *Id.* at 418.

<sup>24</sup> *Id.*

<sup>25</sup> E.g., Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 103 (2003) (“Crucial to Tiebout’s theory was the ability of citizen consumers to translate their preferences for a particular mix of public services into a choice of local government by exercising their power of ‘exit,’ thereby ensuring ongoing competition among municipalities to attract and retain taxpayer citizens.”).

<sup>26</sup> Tiebout, *supra* note 3, at 421.

attract and retain a loyal group of tax paying consumer-voters.<sup>27</sup> Throughout *A Pure Theory of Local Expenditures*, Professor Tiebout's use of the term "city manager" in lieu of more common titles for local government officials that directly attach to politics, such as "mayor,"<sup>28</sup> is appropriate considering the free market principles of his theorem. In a free market of local governments the purpose and responsibilities of a city manager are analogous to a broker or an intermediary party.<sup>29</sup> As a result, the "consumer is . . . surrounded by a government whose objective . . . is to ascertain his wants for public goods and tax him accordingly."<sup>30</sup> In a Tieboutian world, interjurisdictional competition between local governments that would presumably arise from consumer-voter mobility, as well as the slightest alteration of tax schemes and public goods and service packages, is minimized because governmental decentralization creates a variety of diverse jurisdictions in which consumer-voters may reside.

Initially, Professor Tiebout argues for the efficiency of localism based on seven assumptions, known as the extreme model:

1. Consumer-voters are fully mobile and will move to the community where their preference patterns, which are set, are best satisfied.<sup>31</sup>
2. Consumer-voters are assumed to have full knowledge of differences among revenue and expenditure patterns and to react to these differences.<sup>32</sup>
3. There are a large number of communities in which the consumer-voters may choose to live.<sup>33</sup>
4. Restrictions due to employment opportunities are not considered. It may be assumed that all persons are living on dividend income.<sup>34</sup>
5. The public services supplied exhibit no external economies or diseconomies between communities.<sup>35</sup>
6. [T]here is an optimal community size . . . .  
The assumption that some factor is fixed

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<sup>27</sup> See *id.* at 421-22.

<sup>28</sup> See *id.* at 419-22.

<sup>29</sup> *Id.* at 421 ("This conceptual experiment is the equivalent of substituting the city manager for the broker or middleman.").

<sup>30</sup> *Id.* at 417.

<sup>31</sup> *Id.* at 419.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

explains why it is not possible for the community in question to double its size by growth.<sup>36</sup>

7. [C]ommunities below the optimum size seek to attract new residents to lower average costs. Those above optimum size do just the opposite.<sup>37</sup>

The only limitation placed on consumer–voters in Professor Tiebout’s extreme model results from consumer–voters’ pre–tax income. However, as Professor Wallace Oates explains: “Tiebout assumed a world of footloose consumers, who move costlessly among local jurisdictions in response *solely* to fiscal considerations; the Tiebout household is unconstrained by travel costs to a location of employment or by any other non–fiscal ties to a given locality.”<sup>38</sup> From a practical standpoint the occurrence of any of the seven assumptions is difficult to imagine given the socioeconomic inequities found throughout the United States.<sup>39</sup>

#### *B. Tiebout Sorting Applied: Benefit Taxation, Free–Riders, and Spill–Overs*

In order for the theory to apply in practice, benefit taxation is a necessary element of a taxation system in line with Professor Tiebout’s model.<sup>40</sup> Benefit taxation is a neutral component based on a system of earned benefits of public goods and services in coordination with the assumed tax burden, or cost of public goods and services, placed on consumer–voters.<sup>41</sup> Benefit taxation ensures that consumer–voters will be able to effectively bargain for the public goods provided by their local government through participatory democracy.<sup>42</sup> Thus, without benefit

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Wallace E. Oates, *On Local Finance and the Tiebout Model*, 71 AM. ECON. REV. 93, 93 (1981).

<sup>39</sup> *See, e.g., id.* (stating that Professor Tiebout’s extreme model “involves a set of assumptions so patently unrealistic as to verge on the outrageous.”).

<sup>40</sup> *See* UTZ, *supra* note 11, at 221. Benefit taxation is also referred to as the “benefit principle.” *See* Richard A. Musgrave, *Fairness in Taxation*, in THE ENCYCLOPEDIA OF TAXATION & TAX POLICY 135 (Joseph J. Cordes et al. eds., 2d ed. 2005). “The benefit principle holds that people should pay for the public services they receive, just as they must pay for their private purchases in the market. If these payments are fair, so will be benefit taxation.” *Id.* “[T]he benefit view calls for taxes to be seen as prices paid for public services, similar to what the consumer pays for private goods purchased in the market.” *Id.* It follows that benefit taxation is a necessary component when any government attempts to devise a tax system that mirrors Professor Tiebout’s model.

<sup>41</sup> UTZ, *supra* note 11, at 216.

<sup>42</sup> *Id.* at 28–29, 220–21. To support the use of benefit taxation at the local level, Professor David Brunori argues: [U]nder the benefits principle, citizens are exposed to the true cost of government. Citizens can better evaluate the extent of government services they desire by their costs . . . [W]hen

taxation local governments will not be able to compete with other jurisdictions by offering bundles of public goods at various prices to maintain, increase or decrease its current population.

The primary goal of Professor Tiebout's theory is to increase the efficiency of local governments through the provision of public goods and services while equally dividing the costs of those goods and services amongst consumer-voters through local tax schemes, relied on by the vast majority of local governments to maintain and build local revenue.<sup>43</sup> The application of the theory's goal is impractical for two reasons. First, consumer-voters can become "free-riders."<sup>44</sup> Free-riding occurs when a consumer-voter enters a community and purchases or rents a residence worth less than the average home in the community due to the quality or size of the residence, but still receives the same amount of public goods and services as their fellow consumer-voters.<sup>45</sup> Although there is an economic incentive for all consumer-voters to free-ride, this practice is traditionally associated with lower income consumer-voters.<sup>46</sup> However, free-riding can only occur after other consumer-voters are residing in a specific community and the amount of taxation for public goods and services is established by the local government.<sup>47</sup> Second, locally funded public goods and services established for the consumer-voters of one community can "spill-over" into a neighboring community.<sup>48</sup> In order to prevent free-riding and inter-jurisdictional spill-overs, Professor Tiebout asserts that public and private measures such as local zoning ordinances and "implicit agreements among realtors" can prevent free-riders from residing in a municipality where public goods cost more than free-riders can afford based on their pre-tax income.<sup>49</sup>

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citizens are not aware of the tax costs (for example, as a result of exporting), they demand more government services. Operating under the benefits principle . . . tends to lead to destructive tax competition. BRUNORI, *supra* note 20, at 40 (citation omitted).

<sup>43</sup> See, e.g., Oates, *The Many Faces of the Tiebout Model*, *supra* note 23, at 27, 28.

<sup>44</sup> Fischel, *Public Goods and Property Rights*, *supra* note 6, at 349.

<sup>45</sup> *Id.*

<sup>46</sup> Wallace E. Oates & Robert M. Schwab, *Community Composition and the Provision of Local Public Goods*, 44 J. PUB. ECON. 217, 234 (1991) ("In a setting of free mobility, more equitable tax systems create incentives for the poor to 'chase' the rich—and for the latter, in turn, to try to escape to other communities.") [hereinafter Oates & Schwab, *Community Composition and the Provision of Local Public Goods*]; see also Bruce W. Hamilton, *Property Taxes and the Tiebout Hypothesis: Some Empirical Evidence*, in FISCAL ZONING AND LAND USE CONTROLS: THE ECONOMIC ISSUES, *supra* note 12, at 15 ("Thus the Tiebout hypothesis seems to be a formula for 'musical suburbs,' with the poor following the rich in a never-ending quest for a tax base.")

<sup>47</sup> Fischel, *Public Goods and Property Rights*, *supra* note 6, at 349.

<sup>48</sup> Tiebout, *supra* note 3, at 423.

<sup>49</sup> See *id.* at 420.



### III. TIEBOUT CHOICE & WEALTH SEGREGATION

Professor Tiebout recognizes that efficient localism is consistent with wealth and utility disparities between communities, since consumer-voters are relegated to municipalities that offer public goods and services packages based upon their financial status.<sup>50</sup> A Tieboutian world, one that promotes income segregation, contains two different types of communities. First, there are communities with households containing mid- to high-level incomes. For these communities, local government provides high levels of quality public goods. The second type of community contains households with mid- to low-level incomes. These households are supported by local governments that provide low levels of public goods that are of a lesser quality. The first type of community is often referred to as the “haves” and the second as the “have-nots.”<sup>51</sup>

#### A. *How Tiebout Choice Leads to Wealth Segregation and Its Results*

Overall, Professor Tiebout’s theory provides consumer-voters with two related benefits. First, it fuels the motivation behind consumerism—variety and choice. Second, it provides consumer-voters with psychic security. For example, imagine two hypothetical families, the Smiths and the Andersons. The Smiths currently reside in a small New England town called West Chartford that operates under Professor Tiebout’s model. The Andersons are planning on moving from the big city of Chartford to West Chartford to take advantage of West Chartford’s public school system, which many consider the second best in the state. The Smiths’ household consists of two parents and four school-aged children, while the Andersons’ household is led by a single-mother of two school-aged children.

Although the Andersons’ do not need to as much living space as the Smiths, West Chartford has a zoning law requiring that all residential homes are built on lots that are between one half of an acre and one acre. As a result of neutral taxation, the residents of West Chartford all pay virtually the same amount in property taxes despite the size of their plot. While the Smiths’ home is on a one acre plot, the Andersons’ would like to purchase a smaller home, which sits on a half-acre plot of land next door to the Smiths. Since neutral taxation requires every community member to pay the same taxes despite the size of their plot, the Andersons will have to

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<sup>50</sup> See *id.* at 423.

<sup>51</sup> The terms “haves” and “have-nots” are taken from Professor Marc Galanter’s seminal piece: *Why the Haves Come out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95, 103-04 (1974) (arguing that affluent parties—the “haves”—entering into litigation are more likely to succeed than less affluent parties—the “have nots”—who are less knowledgeable, unable to make the same time commitment and access similar resources as their counterparts).

pay the same amount of property taxes as the Smiths in order to reside in the town and take advantage of the benefits. This prevents the Andersons from free-riding and provides assurances of psychic security to the Smiths' that each member of their town must pay the same "going tax rate" to reside there and reap the benefits offered by the town.

These proposed benefits naturally stem from the same three factors necessary for Professor Tiebout's theory to function: (1) free market principles; (2) benefit or anti-progressive taxation and; (3) public and private exclusionary tactics.<sup>52</sup> However, it is important to note that both benefits only attach to individual jurisdictions and their constituents. Consequently, these essential factors facilitate and perpetuate interjurisdictional wealth disparities found throughout local communities in the United States.<sup>53</sup>

In particular, these three factors underpinning Professor Tiebout's theory fuel wealth segregation<sup>54</sup> thereby hindering state and local tax and welfare policies. First, when free from any malfunctions, free-market principles will inevitably increase tax competition between local municipalities.<sup>55</sup> Although Professor Tiebout's theory presents this capitalistic virtue as an advantage, increased competition can foster unpredictable and harmful changes<sup>56</sup> within local tax schemes. These changes, even if only slightly increasing taxation, can place debilitating and irreconcilable pressures on unsuspecting consumer-voters.<sup>57</sup> Second, anti-progressive—"super-regressive"—taxation inherently perpetuates

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<sup>52</sup> See Tiebout, *supra* note 3, at 421-24; see also *supra* Part II.A-B.

<sup>53</sup> Mills & Oates, *The Theory of Local Public Services and Finance*, *supra* note 12, at 5 ("Once we recognize that the demand for public services is systematically related to income, we see that the Tiebout model implies powerful tendencies toward segregation by income level."); see, e.g., Reynolds, *supra* note 27, at 104-06.

<sup>54</sup> See UTZ, *supra* note 11, at 221.

<sup>55</sup> See *id.* at 220; see also Reynolds, *supra* note 27, at 105 ("[T]he highly fragmented local government world envisioned by Tiebout inevitably results in a self-destructive competitive 'race to the bottom,' as municipalities try to out-bid each other in the incentives they are willing to offer to entice business and the property wealth it brings into their jurisdictions.")

<sup>56</sup> See, e.g., Michael Howell-Moroney, *The Tiebout Hypothesis 50 Years Later: Lessons and Lingering Challenges for Metropolitan Governance in the 21st Century*, 68 PUB. ADMIN. REV. 97, 101-02 (2008).

<sup>57</sup> *Id.* Today's subprime mortgage crisis is an excellent example of the domino effect that can result from an unforeseen increase in local taxation because it consists of a predictable chain of events, beginning with an incremental increase in local property taxes due to increased public goods spending. See Kathleen C. Engel & Patricia A. McCoy, *The Subprime Virus*, 17-22 (2008) (unpublished manuscript on file with author). Next, an over-inflated housing market implodes in order to stabilize itself. See *id.* Eventually, after homeowners are no longer able to maintain their mortgage payments due to Adjustable Rate Mortgage triggers, over-spending, or other factors, the cycle ends in foreclosure and sometimes homelessness. See *id.* Although the intermediate phases of subprime foreclosures may differ from one another on a case by case basis, each is prefaced on natural, free-market forces. *Id.*

wealth segregation.<sup>58</sup> As a result, some consumer–voters will inevitably become permanently immobile because they are unable to pay for any package of local public goods and services.<sup>59</sup> For the vast majority of consumer–voters in the United States, residential mobility is not just a privilege, but an unattainable dream. Third, exclusionary measures intended to keep a particular group of people out of a community go undetected because they tend to increase the worth or quality of a community.<sup>60</sup> Additionally, externalities such as lack of employment or familial responsibilities force consumer–voters to live in poverty, and prevent them from exiting and entering affordable communities.<sup>61</sup> Lastly, Professor Tiebout’s theory is limited because many consumer–voters are unable to meet the financial demands required to live in *any* community in the United States.

*B. The Realities of Wealth Segregation: Societal Consequences of Concentrated Poverty*

Ultimately, the divide between the “haves” and the “haves not” is defined as the “poverty line.” Consumer–voters who are unable to afford packages offered by local governments are relegated to a life of psychological and physical squalor due to their economic disposition.<sup>62</sup>

Professor Frank Levy, a labor economist at the Massachusetts Institute of Technology, points out a flaw with a Tieboutian society: “If you start with a system of heavy reliance on the local property tax and have mobile populations, you’re going to end up with geographic distributions that are unequal . . . . People in jurisdictions where there’s not a lot of money left to fend for themselves.”<sup>63</sup> Poverty and the circumstances that follow often prevent many individuals and families residing in impoverished areas from accessing the economic, educational and social opportunities that will

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<sup>58</sup> E.g., Oates & Schwab, *Community Composition and the Provision of Local Public Goods*, *supra* note 48, at 234.

<sup>59</sup> UTZ, *supra* note 11, at 220.

<sup>60</sup> See, e.g., Oates & Schwab, *Community Composition and the Provision of Local Public Goods*, *supra* note 48, at 218-19 (“Efficiency requires that communities be allowed to discriminate among residents in the levying of local taxes; typically, this implies that local communities would have to set higher taxes on low-income families who drive up the cost of providing public goods in the community.”).

<sup>61</sup> E.g. Jennifer Comey et al., *Struggling to Stay Out of High-Poverty Neighborhoods: Lessons from the Moving to Opportunity Experiment*, 6 METROPOLITAN HOUSING & COMMUNITIES CENTER OF THE URB. INST. 4-5, 7 (2008).

<sup>62</sup> See, e.g., Wallace E. Oates & Robert M. Schwab, *Tiebout Model*, in THE ENCYCLOPEDIA OF TAXATION & TAX POLICY, *supra* note 42, at 438-39.

<sup>63</sup> Ford Fessenden, *Rich Get Richer While the Poor Hold Their Own*, N.Y. TIMES, Sept. 2, 2007, at 14WE2.

enable them to improve their lifestyle.<sup>64</sup>

Poverty leads to three negative consequences for democratic societies as a whole. First, poverty leads to a loss in human capital, a vital ingredient to any successful society.<sup>65</sup> It is inconceivable for children affected by hunger, poor health or substandard shelter to achieve the requisite level of education enabling them to become productive workers.<sup>66</sup> In the aggregate, “increases in [educational] inequality have important intergenerational effects that we as society cannot afford to ignore.”<sup>67</sup>

Second, democracy as a whole suffers when a large portion of a constituency is unable to make informed decisions due to externalities caused by poverty, such as lack of knowledge and education.<sup>68</sup> If black Americans or any minority group living in the United States are unable to voice their concerns and objectives through the political process, there can be no plausible way of addressing the injustices caused by discrimination.<sup>69</sup> More importantly, when disenfranchised groups are unable to participate in the democratic process and lack sincere political representation, any policy measures taken by elected officials are destined to ignore the targeted population and will ultimately fail.<sup>70</sup>

The third negative consequence for democracy is due to the substantial increase in violence and crime by those who are continuously subjected to the vicious realities that a life of poverty entails.<sup>71</sup> Concentrated violence and crime often take low income communities under siege.<sup>72</sup> Not only does increased crime and violence lower the quality of life for residents of a specific community, but also there is a tendency for spillovers into other

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<sup>64</sup> As one report states: “Living in high-poverty neighborhoods, with their high unemployment rates, rampant crime, and struggling school and other institutions, can have serious, negative consequences for the well-being and life chances of adults and children.” Comey et al., *supra* note 63, at 1 (citation omitted); see also Howell-Moroney, *supra* note 58, at 100-01.

<sup>65</sup> David S. Law, *Globalization and the Future of Constitutional Rights*, 102 NW. U. L. REV. 1277, 1321-22 (2008) (“Human capital theory holds that the key to economic growth lies not in a given locale’s capacity for low-cost production, but rather in its endowment of highly educated and productive workers.”).

<sup>66</sup> See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA’S SCHOOLS* (1991).

<sup>67</sup> See Mary Campbell et al., *What Does Increased Economic Inequality Imply About the Future Level and Dispersion of Human Capital?*, RUSSELL SAGE FOUND. 20 (2004).

<sup>68</sup> See, e.g., Howell-Moroney, *supra* note 58, at 101.

<sup>69</sup> See *id.*

<sup>70</sup> Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2023-25 (2000) [hereinafter Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter*].

<sup>71</sup> SHERYLL D. CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 244-46 (2004) [hereinafter CASHIN, *THE FAILURES OF INTEGRATION*]. See generally WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1997).

<sup>72</sup> See CASHIN, *THE FAILURES OF INTEGRATION*, *supra* note 73, at 247-48, 51.

jurisdictions, thereby affecting the quality of life in neighboring communities and beyond.<sup>73</sup>

In sum, “[c]oncentrated poverty can . . . be understood as a tax that the more powerful middle and upper classes impose on the residents of impacted communities by extracting opportunities away from low-income communities while refusing to share regional responsibility or risk.”<sup>74</sup> Nevertheless, with time, individuals living outside of an impoverished jurisdiction are also subjected to “poverty taxation”<sup>75</sup> through their neglect of these low-income communities. Thus, even if the “haves” are able to completely segregate themselves from the “have-nots,” they will eventually suffer from the malignant consequences that they are trying to avoid.<sup>76</sup>

#### IV. TIEBOUT SORTING IN THE REAL WORLD: VOLUNTARY RACIAL EXCLUSION

##### A. *Race, Income & Intergenerational Wealth in the United States: The Current State of The “Haves” and The “Have-Nots”*

In 2008, the Center on Budget and Policy Priorities and the Economic Policy Institute published a state-by-state analysis of income trends in the

<sup>73</sup> Professor Robert W. Wassmer notes:

One of the important social costs of concentrating poverty in a few communities in an urban area is the concentrated violence and crime that it can generate in those communities. This not only lowers the quality of life for residents in the communities with the higher rates of violence, but it can also spill over the boundaries of these communities and affects the quality of life in surrounding jurisdictions.

Robert W. Wassmer, *An Economic View of the Causes as well as the Costs and Some of the Benefits of Urban Spatial Segregation*, in *DESEGREGATING THE CITY: GHETTOS, ENCLAVES, AND INEQUALITY* 158, 167-68 (David P. Varady ed., 2005).

<sup>74</sup> Powell, *supra* note 5, at 89; see also CASHIN, *THE FAILURES OF INTEGRATION*, *supra* note 73, at 240 (defining concentrated poverty as “the share of poor people living in neighborhoods where at least 40 percent of their neighbors are also poor.”).

<sup>75</sup> See Powell, *supra* note 5, at 90 (arguing that public goods and taxation policies “place [ ] higher tax burdens on those least able to pay, while they have spared affluent suburbs from having to confront the costs of poverty, which are concentrated on the other side of the city/suburb boundary.”).

<sup>76</sup> For example, Michelle Wilde Anderson notes that poverty is no longer just an inner-city and rural issue, but also a suburban issue:

Poverty is shifting towards the suburbs in general, and independently incorporated first-ring suburbs (in large and small metropolitan areas alike) are becoming a particular locus of financial distress. The year 2005 marked the first time that American history has recorded more poverty in the suburbs than in the cities.

Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 U.C.L.A. L. REV. 1095, 1122 (2008); Peg Tyre & Matthew Philips, *Poor among Plenty: For the First Time, Poverty Shifts to the U.S. Suburbs*, NEWSWEEK, Feb. 12, 2007, at 54.

United States from the late 1980s to 2006.<sup>77</sup> The study's findings were based on data collected from the United States Census Bureau.<sup>78</sup> This comprehensive study found that the disparities in income among the highest-income, middle-class, and poor families have expanded tremendously in every state.<sup>79</sup> In addition, the study found that the general economic prosperity experienced by individuals throughout the country beginning with World War II ended in the 1970s.<sup>80</sup> Specifically, the study found the following income distribution trends between the late 1980s and the mid-2000s:

1. The average income of the poorest fifth of families increased by \$1,814, from \$16,303 to \$18,116.<sup>81</sup>
2. The average income of the *middle* fifth of families increased by \$5,784, from \$44,650 to \$50,434.<sup>82</sup>
3. The average income of the richest fifth of families increased by \$35,027, from \$97,104 to \$132,131.<sup>83</sup>
4. The average income of the richest 5% of families increased by \$82,607, from \$138,191 to \$220,700.<sup>84</sup>

Therefore, the poorest fifth of families in America experienced an average income increase of 11.1%, the middle fifth experienced an average income increase of 13%, the richest fifth experienced an average income increase of 36.1%, and the richest 5% of families experienced an average income increase of 59.8%.<sup>85</sup> It follows that the gap between the "haves" and the "have-nots" has increased tremendously, thereby decreasing the size of the middle class and increasing the amount of poor United States residents.<sup>86</sup>

Since approximately 1968, the income disparity gap between blacks and whites has not improved.<sup>87</sup> Although blacks experienced a 72%

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<sup>77</sup> See generally JARED BERNSTEIN ET AL., CTR. ON BUDGET & POLICY PRIORITIES, PULLING APART: A STATE-BY-STATE ANALYSIS OF INCOME TRENDS (2008), <http://www.cbpp.org/4-9-08sfp.pdf>.

<sup>78</sup> *Id.* at 10.

<sup>79</sup> *Id.* at 15.

<sup>80</sup> *Id.*

<sup>81</sup> CTR. ON BUDGET & POLICY PRIORITIES, UNITED STATES: INCOME INEQUALITY GREW IN THE U.S. OVER THE PAST TWO DECADES (2008), <http://www.cbpp.org/states/4-9-08sfp-fact-us.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> This report did not use race as a factor in its findings. BERNSTEIN ET AL., *supra* note 79, at 64.

<sup>87</sup> JULIA B. ISSACS, ECONOMIC MOBILITY PROJECT: AN INITIATIVE OF THE PEW CHARITABLE TRUSTS, ECONOMIC MOBILITY OF BLACK AND WHITE FAMILIES 2 (2007), [http://www.brookings.edu/~media/Files/rc/papers/2007/11\\_](http://www.brookings.edu/~media/Files/rc/papers/2007/11_)

increase in their per capita income between 1974 and 2004, from \$7,386 to \$12,696, whites saw their per capita income increase from \$12,882 to \$20,328, which translates into a 58% increase.<sup>88</sup> Additionally, blacks have lower employment rates than whites.<sup>89</sup> Notably, while income levels have fluctuated over time, the median personal income of black men was lower in 2004 than in 1974.<sup>90</sup>

More alarming is the disparity between black–white median net worth per household from 1998 and 2000.<sup>91</sup> During this time frame, the median net worth for blacks including home equity was \$7,500, but without home equity this number fell to \$1,166, while the median net worth for whites including home equity was \$79,400, dropping to \$22,566 without home equity.<sup>92</sup>

In 2006, approximately 24.3% of black family incomes fell below the federal poverty threshold.<sup>93</sup> While this represents positive progress since 1967, when black poverty rates were approximately 39.3%, the rates for whites in 2006 and 1968 were far lower—8.3% and 11%, respectively.<sup>94</sup> As of 2005, blacks were more than three times as likely as whites to be in “deep poverty,” meaning that an individual’s income is 50% below the federal poverty line.<sup>95</sup> Specifically, 11.7% of blacks qualified as living in deep poverty as compared to 3.5% of whites.<sup>96</sup>

A 2007 study analyzing intergenerational income differences between black and white families from 1968 to 2005 found that whites are more likely than blacks to earn more money than their parents.<sup>97</sup> Moreover, black children from middle– and upper–middle class homes experience a significant intergenerational decrease in income in comparison to their white counterparts.<sup>98</sup> Middle–class income status does not provide black children with the same future economic security as it affords white children.<sup>99</sup> Consequently, black children are more likely to fall behind the economic achievements of their parents, whereas white children will most likely move ahead.<sup>100</sup> The study’s author concludes that: “Not only do blacks have much fewer assets than whites, but intergenerational

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blackwhite\_isaacs/11\_blackwhite\_isaacs.pdf.

<sup>88</sup> Douglas J. Besharov, *Beyond the Safety Net*, 25 FOCUS 45, 45 (2007).

<sup>89</sup> ISSACS, *supra* note 89, at 2.

<sup>90</sup> *Id.*

<sup>91</sup> Besharov, *supra* note 90, at 50.

<sup>92</sup> *Id.*

<sup>93</sup> ISSACS, *supra* note 89, at 3.

<sup>94</sup> *Id.*

<sup>95</sup> Besharov, *supra* note 90, at 45.

<sup>96</sup> *Id.*

<sup>97</sup> ISSACS, *supra* note 89, at 4.

<sup>98</sup> *Id.* at 5.

<sup>99</sup> *Id.* at 6.

<sup>100</sup> *Id.* at 5-6.

transmission of wealth from parents to children is the largest factor explaining why whites have higher levels of wealth than blacks.”<sup>101</sup>

In comparison to white Americans, black Americans are not faring well in the United States. Given the many contributions made by black Americans to technology, and society in general,<sup>102</sup> this dismal economic outlook cannot reasonably be attributed to inferior intelligence or laziness.<sup>103</sup> Unfortunately, in the United States race inevitably attaches to wealth and blacks are more likely to fall into the “have-nots” category than the “haves.”<sup>104</sup> Thus, it is not surprising that income segregation in America inherently attaches to race.<sup>105</sup>

### B. *Tiebout Preferences v. Racial Biases: Race Still Matters, Even Today*

Since 1973, the United States Census Bureau has conducted the American Housing Survey (“AHS”), an annual, longitudinal, and nationally representative survey of more than 50,000 American households.<sup>106</sup> Results from the AHS show that only five percent of households based their decision to move from one jurisdiction to another on public goods and services, including schooling.<sup>107</sup> In addition, approximately fifty percent of households claim that their decision to move to another jurisdiction was due to family and friends.<sup>108</sup> While some experts claim that an increase in racially segregated municipalities within a metropolitan area as well as decentralized jurisdictions resulting from urban sprawl is not a result of racial prejudice,<sup>109</sup> an overwhelming majority of empirical research conducted on the relationship between race and Tiebout’s theory suggests otherwise.

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<sup>101</sup> *Id.* at 12.

<sup>102</sup> See generally A HAMMER IN THEIR HANDS: A DOCUMENTARY HISTORY OF TECHNOLOGY AND THE AFRICAN-AMERICAN EXPERIENCE (Carroll W. Pursell ed., 2005) (providing a detailed account of contributions by black Americans in a variety of areas such as engineering, medicine and science throughout the history of the United States).

<sup>103</sup> “People who live in unsafe neighborhoods or send their children to inadequate schools don’t do so because they have taste for them. They do so because they feel they have no other choice. If they had a choice . . . they would prefer better schools and less crime.” Gerald E. Frug, *City Services*, N.Y.U.L. REV. 23, 31 (1998).

<sup>104</sup> See, e.g., David Cole, *No Equal Justice*, 1 CONN. PUB. INT. L.J. 19, 22 (2001) (“The consequences of the country’s race and class divisions are felt in every aspect of American life . . .”).

<sup>105</sup> See generally BERNSTEIN ET AL., *supra* note 79. See generally MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY (2d. ed. 2006) (extensive and critically acclaimed study on the relationship between race and wealth disparities in the United States).

<sup>106</sup> See Paul W. Rhode & Koleman S. Strumpf, *Assessing the Importance of Tiebout Sorting: Local Heterogeneity from 1850 to 1990*, 93 AM. ECON. REV. 1648, 1649 (2003).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> See, e.g., Kenneth Bickers & Richard N. Engstrom, *Tiebout Sorting in Metropolitan Areas*, 23 REV. POL’Y RES. 1181 (2006).



For example, a 2003 study on Tiebout sorting analyzed: (1) a sample of American municipalities from 1870 to 1990; (2) every municipality in the Boston metropolitan area from 1870 to 1990 and; (3) all counties in the United States from 1850 to 1990.<sup>110</sup> The study found that as mobility costs decrease, the diversity of residents per municipality also decreases.<sup>111</sup> In addition, the study found that the greatest decline in jurisdictional heterogeneity occurred during the late nineteenth and early twentieth century, when transportation costs decreased due to technological advances.<sup>112</sup> The study concluded that the increase in racial homogeneity between municipalities within the Boston metropolitan area and the other metropolitan areas examined was due to discrimination, not Tiebout choice.<sup>113</sup>

In 2004, another study tested for consumer–voter choice concerning racial segregation, used a cross–national index of public school districts as jurisdictions, and measured in bundles of public goods offered by each jurisdiction.<sup>114</sup> While the study tested for differences in Tiebout choice regarding income, race, ethnicity, and religion, the strongest evidence found that consumer–voters will sacrifice economies of scale in order to avoid living in heterogeneous communities.<sup>115</sup> Although this study found that pressure for municipalities to consolidate into larger jurisdictions increased between 1960 and 1990, less consolidation occurred in counties with racially diverse populations.<sup>116</sup> The researchers of this study found that race and ethnicity play an important role in Tiebout choice, perhaps more so than income.<sup>117</sup>

A third empirical study published in 2005 found that increased Tiebout choice resulting from urban sprawl and its concomitant increase in local governments correlates with increases in residential segregation between blacks and white.<sup>118</sup> The study used the 1980 to 2000 United States Census Bureau data and the 1980 to 1999 Panel Study of Income Dynamics (PSID), which consists of data per household across the nation.<sup>119</sup> In particular, the study found that interjurisdictional segregation increases between 4% to 7% following a 10% increase in Tiebout choice, while

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<sup>110</sup> Rhode & Strumpf, *supra* note 108, at 1649-50.

<sup>111</sup> *Id.* at 1650.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 1666, 1674.

<sup>114</sup> Alberto Alesina et al., *Political Jurisdictions in Heterogeneous Communities*, 112 J. POL. ECON. 348, 349-51 (2004).

<sup>115</sup> *Id.* at 350, 394.

<sup>116</sup> *Id.* at 394.

<sup>117</sup> *Id.* at 395.

<sup>118</sup> Casey J. Dawkins, *Tiebout Choice and Residential Segregation By Race in US Metropolitan Areas, 1980–2000*, 35 REGIONAL SCI. & URB. ECON. 734, 753 (2005).

<sup>119</sup> *Id.* at 735.

intra-jurisdictional segregation increases by less than 1%.<sup>120</sup> These numbers suggest that consumer-voters sort themselves among jurisdictions based on race. Since white-consumer voters have increased mobility, when provided with the opportunity they are more likely to relocate to predominately white jurisdictions.<sup>121</sup>

Despite the practical soundness of Professor Tiebout's theory, the empirical studies discussed above show that consumer-voters do not necessarily use Tiebout preferences, but rely on other factors such as racial biases when deciding where to live. Residential segregation is furthered since whites are more likely than blacks to have the financial means to exit one community and enter another.<sup>122</sup> Professor Casey Dawkins, the author of the 2005 Tiebout sorting study, concludes as follows:

The relatively larger impact of Tiebout choice on jurisdictional segregation suggests that Tiebout choice may not only place black and white households in different locations, but these locations are likely to offer different local public service bundles. This implies that Tiebout-induced sorting may foster increased racial inequalities in the consumption of local public services. Given the importance of local public services such as education and police protection toward welfare and safety of families, future evaluations of the welfare benefits of Tiebout choice should also consider the impacts of Tiebout choice on residential segregation by race.<sup>123</sup>

As Professor Dawkins suggests, racial preferences place a tremendous strain on predominantly black and non-white communities that are not privy to the same quality of public goods and services that white communities are able to afford.<sup>124</sup>

## V. DE FACTO RACIAL SEGREGATION FROM A HISTORICAL PERSPECTIVE

### A. *Two Peas in a Pod: Tiebout Choice and Urban Sprawl*

Although it was not published until 1956, Professor Tiebout's theory

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<sup>120</sup> *Id.* at 753.

<sup>121</sup> *Id.*

<sup>122</sup> *See id.* 735.

<sup>123</sup> *Id.* at 753-54.

<sup>124</sup> For further discussion of empirical studies finding that racial biases are more indicative of where individuals choose to live than traditional Tiebout preferences, *see generally* Wassmer, *supra* note 75, at 159-74 and Casey J. Dawkins, *Recent Evidence on the Continuing Causes of Black-White Residential Segregation*, 26 J. URB. AFF. 379, 387-93 (2004).

was foreshadowed by America's suburban expansion in the 1940s,<sup>125</sup> known as urban sprawl ("sprawl"). Many commentators suggest that the most realistic examples of Professor Tiebout's theory occur through sprawl.<sup>126</sup> For example, Professor Georgette Chapman Poindexter explains:

[S]prawl is not simply a product of population growth (though certainly in many cities that is a major contributor). There is something else going on: revealed preference on the part of homeowners for a lifestyle that includes open space. In classic Tiebout style, the bundle of preference chosen includes open space, something which, increasingly, can only be found further and further out from the urban core.<sup>127</sup>

Since the beginning of the twentieth century, sprawl has been a constant presence in American land development.<sup>128</sup> Today, virtually every metropolitan area in the United States has experienced sprawl in one form or another.<sup>129</sup>

Generally, sprawl is defined as "[t]he outward expansion of population from the urban center to outlying suburbs."<sup>130</sup> Like many terms that define public policies and societal trends, the definition of sprawl depends upon the ideological background and purpose of the individual or organization putting it to use.<sup>131</sup> For example, one article discusses approximately eight different measures used to describe sprawl.<sup>132</sup> For the purposes of this Note, sprawl is defined as the "pattern of urban and metropolitan growth

<sup>125</sup> See e.g., Frug, *supra* note 105, at 26.

<sup>126</sup> Tridib Banerjee & Niraj Verma, *Sprawl and Segregation: Another Side of the Los Angeles Debate*, in *DESEGREGATING THE CITY: GHETTOS, ENCLAVES, & INEQUALITY* 200, 201 (David P. Varady ed., 2005) ("Tiebout's perspective provides a theoretical understanding of sprawl that simultaneously incorporates concerns of efficiency and metropolitan management."); see also PETER DREIER ET AL., *PLACE MATTERS: METROPOLITICS FOR THE TWENTY-FIRST CENTURY* 97-99 (2001); Robert C. Ellickson, *The Puzzle of the Optimal Social Composition of Neighborhoods*, in *THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES*, *supra* note 23, at 199; Hamilton, *supra* note 48, at 28; Mills & Oates, *The Theory of Local Public Services and Finance*, *supra* note 12, at 10-11.

<sup>127</sup> Georgette Chapman Poindexter, *Land Hungry*, 21 J.L. & POL. 293, 315 (2005).

<sup>128</sup> See e.g., DAVID RUSK, *CITIES WITHOUT SUBURBS* 7-9 (1993).

<sup>129</sup> See *id.*

<sup>130</sup> Powell, *supra* note 5, at 74.

<sup>131</sup> See, e.g., Paul A. Jargowsky, *Sprawl, Concentration of Poverty, and Urban Inequality*, in *URBAN SPRAWL: CAUSES, CONSEQUENCES & POLICY RESPONSES*, *supra* note 5, at 49 (noting that the ambiguous and contradictory definitions of sprawl are equivalent to the use of the term "underclass" during the mid-1980s).

<sup>132</sup> George Galster et al., *Wrestling Sprawl to the Ground: Defining and Measuring an Elusive Concept*, 12 HOUS. POL'Y DEBATE 681, 687-704 (2001).

that reflects low-density, automobile-dependent, exclusionary new development on the fringe of settled areas often surrounding a deteriorating city.”<sup>133</sup> Excluding the “automobile-dependent” requirement, this definition fits perfectly with Professor Tiebout’s model and his reasoning for its implementation. For instance, Professor Tiebout states: “Every resident who moves to the suburbs to find better schools, more parks, and so forth, is reacting, in part, against the pattern the city has to offer.”<sup>134</sup> This statement expresses a value preference for suburbs over cities, thereby promoting suburban expansion.

*B. Wealth, Mobility, Participatory Democracy, and Racial Anxiety:  
The Prerequisites for Turn of the Century Sprawl, 1880–1910*

Before the first wave of sprawl took place at the end of the nineteenth century, three interconnected factors caused localism to take hold of the American conscious. First, a growing constituency of middle- to upper-middle class families slowly began to migrate from inner cities to what would become the suburbs.<sup>135</sup> Second, the increase in affluence experienced in these suburbs caused an increase in human capital leading to an increase in the quantity and quality of public goods provided in those municipalities.<sup>136</sup> Finally, those opposed to racial and ethnic integration efforts began to build alliances with one another as more and more blacks and European immigrants began migrating to metropolitan areas.<sup>137</sup>

By the close of the nineteenth century, the great expansion of cities in the United States curtailed significantly, signaling the beginning of the first wave of sprawl.<sup>138</sup> There were two factors which lead to the decline of city expansion: the electric street car and trolley, and the enactment of new laws making it relatively easy for suburbs to incorporate.<sup>139</sup> Nonetheless, as Professor Kenneth Jackson notes, the most important impetus of sprawl was “the changing reality and image . . . with regard to demographic characteristics” of American cities.<sup>140</sup>

*C. The White Man’s Temporary Burden: European Immigrants and Their Transformation From “Others” to White Americans, 1880–1940*

Between 1880 and 1920 millions of eastern and southern Europeans

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<sup>133</sup> Gregory D. Squires, *Urban Sprawl and the Uneven Development of Metropolitan America*, in URBAN SPRAWL: CAUSES, CONSEQUENCES & POLICY RESPONSES, *supra* note 5, at 2.

<sup>134</sup> Tiebout, *supra* note 3, at 420.

<sup>135</sup> JACKSON, *supra* note 22, at 147.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 150.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 114-15, 150-52; see Powell, *supra* note 5, at 75.

<sup>140</sup> JACKSON, *supra* note 22, at 150.

immigrated to the United States due to economic recessions in their native countries.<sup>141</sup> Most of America's new residents immigrated to major cities in the Northeast and Midwest for three reasons. First, many new immigrants were welcomed to the United States by previously emigrated friends and relatives, who helped them benefit socially from their already established networks.<sup>142</sup> Second, these immigrants capitalized on employment opportunities offered by booming factories that required more labor than native whites could supply.<sup>143</sup> Third, factory work located in large urban areas did not require workers to have any formal training or education,<sup>144</sup> which alleviated the burden of language barriers between immigrant laborers and their native white managers. This wave of "new" immigrants from rural and impoverished areas of eastern and southern Europe, such as Russia, Poland, Italy, Greece, and Czechoslovakia encountered much more hostility and discrimination than the previous wave of mostly Irish immigrants during the mid-nineteenth century.<sup>145</sup>

Native whites possessed an increased disdain for America's new residents for several reasons. First, unlike native whites the majority of the new immigrants were not Protestant.<sup>146</sup> Second, they were disliked due to various cultural differences such as diet, child rearing, social interactions, and social gatherings.<sup>147</sup> Third, limited finances prevented many new immigrants from accessing professional medical treatment or practicing basic hygiene regimens that their middle- and upper-middle class counterparts assumed were readily available to everyone residing in the United States.<sup>148</sup> Fourth, the surge of new immigrants did not share the same "Anglo-Saxon" or "Nordic" physical characteristics that their northern and western European predecessors did with white natives.<sup>149</sup>

Nevertheless, elite native whites in New England<sup>150</sup> set out to

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<sup>141</sup> DOUGLASS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 18 (1994).

<sup>142</sup> *Id.* at 27.

<sup>143</sup> *Id.* at 26.

<sup>144</sup> *See id.* at 26-27.

<sup>145</sup> *Id.* at 27; *see also* KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* 27 (1998) ("The U.S. 'discovery' that Europe was divided into inferior and superior races began with the racialization of the Irish in the mid-nineteenth century and flowered in response to the great waves of immigration from southern and eastern Europe that began in the late nineteenth century. Before that time, European immigrants . . . had been largely assimilated into the white population. However, the 23 million European immigrants who came to work in U.S. cities in the waves of migration after 1880 were too many and too concentrated to absorb.")

<sup>146</sup> *See* Linda Gordon, *Single Mothers and Child Neglect, 1880-1920*, 37 *AM. Q.* 173, 177-78 (1985).

<sup>147</sup> *See id.* at 178.

<sup>148</sup> *See id.* at 177.

<sup>149</sup> *E.g.*, DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS* 139-43 (2005).

<sup>150</sup> Professor R. Kent Newmyer writes the following to describe the unfettered success of the Brahmin elite:

marginalize southern and eastern European immigrants through racism.<sup>151</sup> In particular, the New England elites embarked on a nativistic campaign built on the racial superiority of the Anglo-Saxon tradition, an ideal dating back to the Civil War.<sup>152</sup> Because only a small percentage of the United States was of Anglo-Saxon decent, this anti-immigration ploy became a reality through claims that “northern Europeans were . . . first cousins to the Anglo-Saxons.”<sup>153</sup> As Professor John Higham explains, New England elites were armed with the proper “ideological instrument” and maintained the “political leadership necessary to bring into a single focus . . . chaotic resentments against the new immigrant[s].”<sup>154</sup>

Consequently, the new immigrants were racialized. Although they were not considered “white,” they ranked higher on the racial totem pole than Asians and blacks.<sup>155</sup> At the turn of the nineteenth century, southern and eastern European immigrants “often existed between nonwhiteness and full inclusion as whites, not just between black and white.”<sup>156</sup> In addition, it was more difficult for certain groups of new immigrants, especially Greeks, Slavs, and Italians to overcome their racialization because their “dark features” set them further apart from northern and western European immigrants and white natives.<sup>157</sup>

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New England’s Federalist elite, though out of power in the national government, [were] well placed to weather the storm in New England. It was their capital and entrepreneurial genius that fused power, technology, and labor into the productive miracle of the Merrimack Valley. Economic power was consolidated in the Boston Associates, and family fortunes were secured by frequent intermarriage and provident investment. The leisure that came with wealth permitted the families who dominated the economy to control the religious, educational, and philanthropic institutions of Boston, which became the intellectual capital of a distinctive regional culture.

R. Kent Newmyer, *Harvard Law School, New England Legal Culture, and the Antebellum Origins of American Jurisprudence*, 74 J. AM. LEGAL HIST. 814, 817 (1987). Thus, the claims that nationalism served as the motivating force behind the Anglo-Saxon charge against all other races, specifically natives of eastern and southern Europe as well as the economic boom that enticed the new immigrants to migrate to the United States—the Industrial Revolution—were actually premised upon localism. See *id.* at 815-16. The forces at play in New England beginning right before the Civil War until the Great Depression would forever change American society and leave behind a legacy of ideals that still form the basic principles of American hegemony as it exists even today. *Id.* at 816.

<sup>151</sup> JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM: 1860-1925* at 95-96 (2002).

<sup>152</sup> *Id.* at 95.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 96.

<sup>155</sup> See ROEDIGER, *supra* note 151, 57-92 (examining how American “courts, reformers, employers, and unions consistently slotted new immigrants in *inbetween* racial spaces”) (emphasis added).

<sup>156</sup> *Id.* at 13.

<sup>157</sup> See *id.* at 50-54, 64-72. “The Jew, the Russian, the Hungarian, the Italian complexion is today darkly out shading the Americanized descendants of the English, the Irish and Scotch, the German and Swede . . .” George B. H. Swayze, *Reluctant Pregnancy*, 37 MED. TIMES 321, 321 (1909).

Eventually, the new immigrants were able to shed their “non-whiteness” much like the Irish<sup>158</sup> by assimilating into white native culture.<sup>159</sup> Although discrimination against some groups of European immigrants during the late 1800s and early 1900s was predicated on their darker skin tone, history shows that their complexions were “white” enough for them to gain acceptance as equals by white natives and eventually become white Americans.<sup>160</sup> The new immigrants’ transition from being “in-between peoples” to white Americans began with the enactment of the Johnson–Reed Immigration Restriction Act of 1924.<sup>161</sup> More specifically, second and third generation immigrants received an indication that they were fully assimilated in 1940 when the United States Census Bureau stopped differentiating between native and immigrant

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<sup>158</sup> See ROEDIGER, *supra* note 151, at 62.

<sup>159</sup> While advocating for the reform of American public schools, Professor Ellwood Cubberley argued that it was in the Nation’s best interest for eastern and southern European immigrants to assimilate into American culture:

Our task is to break up these groups or settlements, to assimilate and amalgamate these people as a part of our American race, and to implant in their children, so far as can be done, the Anglo–Saxon conception of righteousness, law and order, and popular government, and to awaken in them a reverence for our democratic institutions and for those things in our national life which we as a people hold to be of abiding worth.

ELLWOOD CUBBERLEY, CHANGING CONCEPTIONS OF EDUCATION 15–16 (1909); *see also* BRODKIN, *supra* note 147, at 36 (“Instead of dirty and dangerous races that would destroy American democracy, immigrants became ethnic groups whose children had successfully assimilated into the mainstream and risen to the middle class.”). Defining assimilation and stating the purpose behind this process, Professor Sylvia R. Lazos Vargas writes:

Assimilation refers to the process of adopting and taking on as one’s own the cultural values and behaviors, such as language, dress, or speech, of the native group. The goal of assimilation is for the incoming immigrant group no longer to stand out as different, or alternatively to “melt into” the dominant group so successfully that recognizable ethno–cultural behaviors and attributes are weak identifiers of distinctiveness.

Sylvia R. Lazos Vargas, *Emerging Latina/o Nation and Anti–Immigrant Backlash*, 7 NEV. L.J. 685, 699–700 (2006). For a detailed discussion on assimilation in the United States see MILTON M. GORDON, ASSIMILATION IN AMERICAN LIFE: THE ROLE OF RACE, RELIGION AND NATIONAL ORIGINS (1964).

<sup>160</sup> *See, e.g.*, MASSEY & DENTON, *supra* note 143, at 33.

<sup>161</sup> *See* James Barrett & David R. Roediger, *Inbetween Peoples: Race, Nationality, and the “New–Immigrant” Working Class*, in COLORED WHITE: TRANSCENDING THE RACIAL PAST 138, 168 (David R. Roediger ed., 2002) (“Only after the racial threat of new immigration was defused by the racial restriction of the Johnson–Reed Act restricting immigration in 1924 would new immigrants haltingly find a place in the ethnic wing of the white race.”); Kerry Abrams, *Immigration Law and the Regulation of Marriage*, 91 MINN. L. REV. 1625, 1637 (2007) (“Congress restricted immigration so that immigrants would racially replicate the current U.S. population and thus maintain a population that was of primarily northern European descent.”)

parentage.<sup>162</sup>

American history has made it clear that the key to obtaining financial independence and prosperity, reaching the “American Dream,” is assimilation into white native American culture. For the purposes of this Note, assimilation is determined by a three-prong test.<sup>163</sup> First, one must become “part of [the] prosperous middle-class majority.”<sup>164</sup> The conditions of the second prong are reached through socio-cultural assimilation.<sup>165</sup> Although many immigrants hold on to various social and cultural norms from their native countries, it is necessary that they adopt most, if not all of the dominant majority’s customs and traditions to become a member of the majority culture.<sup>166</sup> Finally, the third prong requires an individual to be the “right” color;<sup>167</sup> in the United States the right color is white.

While blacks are able to meet the conditions of prongs one and two, they obviously fall short of fulfilling the third. There are some blacks whose skin color and other physical characteristics allow them to “pass” and fully assimilate into white American culture.<sup>168</sup> For many blacks,

<sup>162</sup> *E.g.*, BRODKIN, *supra* note 147, at 36 (“The 1940 Census no longer distinguished native whites of native parentage from those . . . of immigrant parentage, so Euro-immigrants and their children were more securely white by submersion in an expanded notion of whiteness.”).

<sup>163</sup> However, Professor Milton M. Gordon identifies seven stages of assimilation: (1) cultural or behavioral assimilation; (2) structural assimilation; (3) marital assimilation; (4) identificational assimilation; (5) attitude-receptional assimilation; (6) behavior receptional assimilation and; (7) civic assimilation. GORDON, *supra* note 161, at 68-77.

<sup>164</sup> BRODKIN, *supra* note 147, at 36.

<sup>165</sup> See ROBERT BLAUNER, RACIAL OPPRESSION IN AMERICA (1972), reprinted in JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 28, 30-31 (2d ed. 2007).

<sup>166</sup> See *id.* at 31.

<sup>167</sup> See *id.* at 31; ROEDIGER, *supra* note 151, at 58; see also Kevin R. Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twenty-First Century*, 8 LA. RAZA L.J. 42, 82-83 (1995) (arguing that physical characteristics like skin color make it more difficult for Latinos to blend into mainstream American culture than Europeans).

<sup>168</sup> RACHEL F. MORAN, INTERRACIAL INTIMACY: THE REGULATION OF RACE & ROMANCE 43-48 (2001). Ever since blacks were brought to the United States in bondage as slaves, those of white ancestry have often crossed the color line by passing as white “to escape racial limitations.” *Id.* at 48. To describe passing for blacks in the United States, Professor Randall Kennedy writes:

Passing is a deception that enables a person to adopt specific roles or identities from which he or she would otherwise be barred by prevailing social standards. The classic racial passer in the United States has long been the “white Negro,” an individual whose physical appearance allows him to present himself as “white” but whose “black” lineage (typically only a very partial black ancestry) makes him a Negro according to dominant racial rules.

RANDALL KENNEDY, INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION 283 (2003). Professor Kendall further contends that “passing requires a person be consciously engaged in concealment.” *Id.* at 285. Also, blacks and other non-whites are able to pass by “sounding white” during telephone conversations. *Id.* at 290. Depending on the context, Professor Angela Onwuachi-Willig notes that non-whites are able to pass as white via dialect even when their racial background varies. Angela Onwuachi-Willig, *Undercover Other*, 94 CAL. L. REV. 873, 887 (2006).



especially before the Civil Rights movement, passing as white “ensured higher economic returns in the short term, as well as greater economic, political, and social security in the long run.”<sup>169</sup> Nevertheless, most blacks who are able to pass as “white” do not act on this “opportunity” because much of the legacy of blacks in the United States is defined by white America’s constant rejection and derogation of them, their families, friends, and communities.<sup>170</sup>

*D. America’s Original Sin: Black America’s Transition from Bondage to Apartheid, 1865–1940*

While northern American cities were expanding and industry was booming during the latter half of the nineteenth century, the South was grappling with the devastation caused by the Civil War.<sup>171</sup> More damaging than the physical destruction caused to southern and Border States by the Civil War were the economic and intellectual tolls imposed by the Union’s confiscation of several billion dollars worth of private property—more than four million freed slaves pursuant to the enactment of the Thirteenth Amendment in 1865.<sup>172</sup> Although one would think that a large portion of newly freed slaves would automatically move to the north, most migrated to underdeveloped, rural areas in the South.<sup>173</sup>

During Reconstruction, which occurred from the end of the Civil War until 1877, the Federal Government attempted to revitalize the South in the face of conflicting policies, interests, and ideals.<sup>174</sup> Despite the creation of the short lived Black Codes from 1865 to 1866, which were almost identical to the antebellum Slave Codes,<sup>175</sup> there were many steps taken by the Federal government and private entities to help “uplift” the newly freed slaves.<sup>176</sup> Beginning in the early 1870s, many southern whites began to organize and form a powerful constituency known as the “Redeemers” because they were frustrated with the federal government’s tight grip on southern redevelopment, and initiatives concerning the economic and political enfranchisement of the former slaves.<sup>177</sup>

The Redeemers’ main purpose, to restore Southern “white

<sup>169</sup> Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1713 (1993).

<sup>170</sup> *See id.* at 1710-12.

<sup>171</sup> JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS* 228-29 (5th ed. 1980). The Civil War began in 1861 and ended in 1865. *Id.* at 228.

<sup>172</sup> *See id.* at 215, 229, 238.

<sup>173</sup> *See* AUGUST MEIER & ELLIOT M. RUDWICK, *FROM PLANTATION TO GHETTO: AN INTERPRETIVE HISTORY OF AMERICAN NEGROES* 192 (1966).

<sup>174</sup> FRANKLIN, *supra* note 173, at 227-67.

<sup>175</sup> *Id.* at 232; MEIER & RUDWICK, *supra* note 175, at 134.

<sup>176</sup> *See generally* FRANKLIN, *supra* note 173, at 227-50; MEIER & RUDWICK, *supra* note 175, at 123-55.

<sup>177</sup> MEIER & RUDWICK, *supra* note 175, at 144, 153-54.

domination,” was not just fueled by centuries of hate for the “inferior” race but also by the threat of the abolition of the southern agrarian economy due to the Industrial Revolution, and its nationalistic ideals that were propagated by a powerful Republican Congress.<sup>178</sup> During the Civil War, “[n]either white nor black southerners were aware of the revolutionary implications of the industrial changes taking place” in northern cities.<sup>179</sup> As a result, Professor John Hope Franklin explains that:

Southerners who traveled in the North after the Civil War were amazed at the changes that a few years had wrought in the economic life of the section. The pressing military needs, the extensive inflation of the Union currency, and the stimulating effect of protective tariff legislation had all conspired to industrialize the North . . . . Hundreds of technological developments made possible the production of commodities, the conception of which would have strained the imagination two decades earlier. New forms of economic organization and the world were almost unlimited, and whose leaders were filled with a desperate anxiety to create monopolies and reap huge profits. Northerners were as anxious to sell to ex-Confederates as they were to Northerners. The most discerning Southerners must have seen that the new order of things was the result of the triumph of industrialism over the agrarian way of life.<sup>180</sup>

Fearing economic, military, and psychological defeat, the Redeemers fought for their livelihood and regained control of the South by reseating Democrats in Congress and state legislatures.<sup>181</sup> Concomitantly, the Redeemers and their supporters solidified their positions by intimidating blacks and their northern white patrons through economic schemes, as well as acts of violence ranging from beatings and murders to race riots.<sup>182</sup>

All hopes of racial equality in the South were lost with the Tilden-Hayes Compromise of 1877.<sup>183</sup> In the 1876 presidential election, the Federalist Republicans, champions of the Civil War Amendments, turned their backs on the newly freed slaves by agreeing to withdraw federal

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<sup>178</sup> See FRANKLIN, *supra* note 173, at 228-31.

<sup>179</sup> *Id.* at 240.

<sup>180</sup> *Id.* at 228.

<sup>181</sup> *Id.* at 255-63.

<sup>182</sup> MEIER & RUDWICK, *supra* note 175, at 154.

<sup>183</sup> *Id.* at 155.

troops from the South in exchange for Hayes' confirmation as President.<sup>184</sup> Thus, in 1877 the legislative and executive branches of the federal government officially deserted the former slaves with the Tilden–Hayes Compromise.

The federal judiciary followed its sister branches by ruling on a string of litigation involving individual rights that hindered the growth of blacks in the United States for over a century, thus legalizing segregation.<sup>185</sup> By 1878, the majority of the former confederate states enacted legislation requiring racial segregation in all public schools.<sup>186</sup> Most states throughout the country followed suit throughout the 1880s and 1890s.<sup>187</sup> Subsequently, in the 1883 *Civil Rights Cases*, the Supreme Court struck down the 1875 Civil Rights Act as unconstitutional under the Thirteenth and Fourteenth Amendments.<sup>188</sup> In 1896, the Court furthered its anti-black sentiments when it upheld the “Separate but Equal” doctrine in its landmark decision, *Plessy v. Ferguson*.<sup>189</sup> Finally, in 1898, the Court solidified the “inferior status” of blacks by allowing literacy, legacy, and poll-tax qualifications for voting at the local, state, and federal levels in *Williams v. Mississippi*.<sup>190</sup>

As the federal government began to cease Reconstruction efforts, even the most dedicated white racial egalitarians were exhausted and disillusioned with the little progress made by the freed slaves during Reconstruction.<sup>191</sup> At least one commentator has asserted that since the former slaves failed to live up to the egalitarians' high expectations, those very benefactors concluded that the slaves were just “not ready for self-government.”<sup>192</sup> However, the barriers that prevented black empowerment during Reconstruction rested upon the “confusion and half-heartedness of the policies [implemented] by their supposed benefactors,”<sup>193</sup> “ignorance of the needs of Negroes and . . . the problem of survival in a [racially] hostile world.”<sup>194</sup>

Around the turn of the century, three severe economic crises<sup>195</sup> and

<sup>184</sup> *Id.*

<sup>185</sup> FRANKLIN, *supra* note 173, at 257.

<sup>186</sup> MEIER & RUDWICK, *supra* note 175, at 162.

<sup>187</sup> *Id.*

<sup>188</sup> 109 U.S. 3 (1883).

<sup>189</sup> 163 U.S. 537 (1896).

<sup>190</sup> 170 U.S. 213 (1898).

<sup>191</sup> See MEIER & RUDWICK, *supra* note 175, at 154-55.

<sup>192</sup> *Id.* at 155.

<sup>193</sup> *Id.*

<sup>194</sup> FRANKLIN, *supra* note 173, at 237.

<sup>195</sup> MEIER & RUDWICK, *supra* note 175, at 190. The first economic crisis occurred towards the latter half of the depression of the 1870s. *Id.* The second economic crisis took place in 1890 during the peak of the populist–agrarian revolt. *Id.* The third economic crisis resulted from the minor depression that occurred right before the first World War began. *Id.*

segregation statutes referred to as “Jim Crow” caused southern blacks hoping to find steady employment and acceptance among whites to migrate to the North and Midwest.<sup>196</sup> Between 1870 and 1890 approximately 150,000 blacks migrated to the North.<sup>197</sup> As lynching became a more popular practice in the South during the 1880s and 1890s, more blacks migrated to the North.<sup>198</sup> During the 1890s, about 174,000 additional blacks ventured north for a new beginning, and 197,000 more would follow between 1900 and 1910.<sup>199</sup> A decade of failed crops and economic despair saw approximately 525,000 blacks migrate to the North from 1910 to 1920, where factories were in need of unskilled workers.<sup>200</sup> During the 1920s, over 877,000 more blacks sought refuge in the industrialized North.<sup>201</sup>

Upon their arrival, blacks found that there were many similarities between northern and southern whites.<sup>202</sup> White workers felt that their job security was endangered by increasing black populations, white parents took their children out of integrated schools, and the media printed racist news reports.<sup>203</sup> Between 1900 and the 1920s, there were race riots in almost every large northern city.<sup>204</sup> Specifically, “[n]orthern whites viewed this rising tide of black migration with increasing hostility and considerable alarm . . . . [And] immigrants, who were themselves scorned by native whites, reaffirmed their own ‘whiteness’ by oppressing a people that was even lower in the racial hierarchy.”<sup>205</sup>

The black “invasion” led to residential segregation forcing blacks to live in specific areas of town under legal measures such as racial covenants, collective anti-black action, discriminatory real estate practices and violence.<sup>206</sup> Prior to the migration of blacks during the 1900s, racial covenants were unusual.<sup>207</sup> Whether wealthy or poor, blacks were forced to reside in the black area of town.<sup>208</sup> In 1890, residential wards within the seventeen largest cities outside of the South experienced an average of

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<sup>196</sup> *Id.* at 190-92; see also Raymond A. Mohl, *Shifting Patterns of American Urban Policy since 1900*, in *URBAN POLICY IN TWENTIETH-CENTURY AMERICA* 1, 5 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993).

<sup>197</sup> MASSEY & DENTON, *supra* note 143, at 27.

<sup>198</sup> MEIER & RUDWICK, *supra* note 175, at 164.

<sup>199</sup> MASSEY & DENTON, *supra* note 143, at 28.

<sup>200</sup> *Id.* at 29.

<sup>201</sup> *Id.*

<sup>202</sup> See *id.* at 30; MEIER & RUDWICK, *supra* note 175, at 192.

<sup>203</sup> MASSEY & DENTON, *supra* note 143, at 29-30.

<sup>204</sup> *Id.* at 30; MEIER & RUDWICK, *supra* note 175, at 192.

<sup>205</sup> MASSEY & DENTON, *supra* note 143, at 29.

<sup>206</sup> *Id.* at 30.

<sup>207</sup> *Id.* at 36-37.

<sup>208</sup> *E.g., id.* at 33.

6.7% racial segregation.<sup>209</sup> By 1930, approximately 29.9% of the residential wards in the same cities were racially segregated.<sup>210</sup> By 1940, about 80% of residential areas in northern cities were racially segregated per ward.<sup>211</sup> Southern cities also saw an influx of blacks, but were “prepared” to combat integration by enacting Jim Crow laws.<sup>212</sup>

The migration of blacks into northern cities during the beginning of the twentieth century served as the greatest motivating factor for whites to flee into racially homogenous suburbs.<sup>213</sup> Yet, only the most affluent whites were afforded this “luxury.”<sup>214</sup> With the financial ability to pay for a more expensive lifestyle, affluent whites made their mission to secure their suburban communities a moral one.<sup>215</sup> An editorial from a suburban weekly newspaper reasoned:

The real issue is not taxes, nor water, nor street cars—it is a much greater question than either. It is the moral control of our village . . . . Under local government we can *absolutely* control every objectionable *thing* that may try to enter our limits—but once annexed we are at the mercy of the city hall.<sup>216</sup>

Thus, localism is the main ingredient to Professor Tiebout’s theory, which reemerged in the American consciousness as a means of white survival.

#### *E. The Validation of American Apartheid Through Modern Day Sprawl, 1940–Present*

The federal government used localism to ensure the success of post–World War II housing initiatives. Through programs such as the Home Owners Loan Corporation (“HOLC”) and the Federal Housing Authority (“FHA”), the federal government imposed discriminatory residential measures on black Americans while opening the flood gates for more than half a century of sprawl.<sup>217</sup> In particular, federal tax and mortgage subsidies created by the HOLC and FHA worked in conjunction with the GI Bill, racial covenants and other private tactics, making it impossible for

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<sup>209</sup> *Id.* at 24.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* This percentage would increase based on racial segregation per city block. *Id.*

<sup>212</sup> *Id.* at 41.

<sup>213</sup> See Mohl, *supra* note 198, at 4–5.

<sup>214</sup> Powell, *supra* note 5, at 74.

<sup>215</sup> JACKSON, *supra* note 22, at 151.

<sup>216</sup> *Id.* (emphasis added).

<sup>217</sup> *E.g.*, Powell, *supra* note 5, at 77.

black Americans to become beneficiaries of American suburbanization from the 1940s to the 1980s.<sup>218</sup>

By 1950, whites began fleeing America's cities in droves just as the second wave of black migration from the rural South to the urban North began.<sup>219</sup> Unlike the first, this second wave of migration saw approximately four million blacks take refuge in the Jim Crow-less land of the north.<sup>220</sup> As a result, the suburbs became analogous with the "American Dream," consisting of "nuclear families" living in free-standing, single-family homes with backyards and an automobile for each parent. The cities became the polar opposite and home to the majority of blacks.<sup>221</sup> In 1870, approximately 80% of black Americans lived in the rural South, but by 1970, 80% of black Americans resided in cities, half of which were located outside of the South.<sup>222</sup> By the time Congress enacted the 1968 Fair Housing Act, it was too late because cities and their black refugees were totally isolated from their suburban counterparts.<sup>223</sup> Today, American cities and suburbs are still polar opposites, and suffer from the hypersegregation<sup>224</sup> that Congress set out to abolish forty years ago. However, it is today's wealth inequities and racial prejudice that perpetuate residential racial segregation, and not the purposeful discriminatory measures of yesterday.<sup>225</sup>

#### VI. POLICY REFORMS THAT ADDRESS RACE AND WEALTH INEQUITIES SPAWNED BY TIEBOUT CHOICE AND URBAN SPRAWL

Unfortunately, Professor Tiebout failed to address the irreconcilable outcomes that would automatically adhere to his theory via sprawl— income and race segregation.<sup>226</sup> While Professor Tiebout could have addressed issues of income and race segregation in future writings, his

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<sup>218</sup> *See id.*

<sup>219</sup> MASSEY & DENTON, *supra* note 143, at 45.

<sup>220</sup> *Id.* at 46.

<sup>221</sup> *Id.* at 18-19.

<sup>222</sup> *Id.* at 18.

<sup>223</sup> *See id.* at 19.

<sup>224</sup> MELISSA FAVREAU, ECONOMIC MOBILITY PROJECT: AN INITIATIVE OF THE PEW CHARITABLE TRUSTS, DISCRIMINATION AND ECONOMIC MOBILITY 5 (2007), [http://www.urban.org/UploadedPDF/1001156\\_Discrimination.pdf](http://www.urban.org/UploadedPDF/1001156_Discrimination.pdf) (defining hypersegregation as "extremely high levels of segregation."). *See* MASSEY & DENTON, *supra* note 143, at 74 (providing a formal definition of hypersegregation).

<sup>225</sup> *See supra* Part III. & IV.

<sup>226</sup> *See* Banerjee & Verma, *supra* note 128, at 209 ("Tiebout saw political fragmentation of metropolitan space and decentralized governance leading to more efficient housing markets, but he failed to address issues like income inequality, segregation, and environmental injustice."); Howell-Moroney, *supra* note 58, at 100 ("Tiebout's essay was written from—and hence is somewhat bound to—a specific sociohistorical context. In the 1950s, matters of racial and social equity were not yet major concerns. It is not surprising . . . that the dimensions of race and class did not find their way into Tiebout's original argument.").

untimely death in January of 1968 at the age of 43 prevented such further work.<sup>227</sup> Even though twelve years passed between the publication of *A Pure Theory of Local Expenditures* and Professor Tiebout's unexpected death, the study of local governance was not a popular topic for academics, professionals, or government officials between World War I and the late 1960s.<sup>228</sup> As Professor William Fischel explains:

Tiebout probably stopped writing about local public finance for career reasons. Most economists develop more than one line of inquiry and gravitate toward that which is best received by the profession. It seems likely that the response Tiebout was getting to his 1956 article was not encouraging enough to keep him or his graduate students interested in it, especially when his regional-science research was doing quite well.<sup>229</sup>

In fact, it was not until Professor Oates' published his seminal piece in 1969, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*,<sup>230</sup> that Professor Tiebout's theory "took off" and became a central theme in local governance.<sup>231</sup>

Nevertheless, where Professor Tiebout left off, many would continue on. Twenty-five years after Professor Tiebout's groundbreaking article was published, Professor Oates noted that academics and practitioners considered his theory "the touchstone of the economics of local government."<sup>232</sup> By its fiftieth anniversary, Professor Tiebout's model transcended the boundaries of economics to areas such as legal scholarship, public education, government structure, land use regulation, federalism, and most importantly, societal wealth and race inequities.<sup>233</sup> Many legal scholars and practitioners have argued for various reforms to counteract de facto racial residential and wealth segregation, as well as the negative externalities that follow due to the increase in Tieboutian policies

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<sup>227</sup> William A. Fischel, *Footloose at Fifty*, in THE TIEBOUT MODEL AT FIFTY: ESSAYS IN PUBLIC ECONOMICS IN HONOR OF WALLACE OATES, *supra* note 23, at 4 [hereinafter Fischel, *Footloose at Fifty*]. Professor Tiebout died of a heart attack. *Id.*

<sup>228</sup> *Id.* at 5-7.

<sup>229</sup> *Id.* at 5.

<sup>230</sup> Wallace E. Oates, *The Effects of Property Taxes and Local Public Spending on Property Values: An Empirical Study of Tax Capitalization and the Tiebout Hypothesis*, 77 J. POL. ECON. 957 (1969).

<sup>231</sup> Fischel, *Footloose at Fifty*, *supra* note 229, at 5.

<sup>232</sup> *Id.* at 8.

<sup>233</sup> *Id.* at 8-18.

within local governments throughout the United States.<sup>234</sup>

### A. Regionalism

Throughout the 1990s, a large body of literature focused on reforms aimed at diluting local powers by creating state wide policies concerning residential wealth and race segregation, often referred to as “regionalism.”<sup>235</sup> Professor Reynolds explains that regionalists argue that “regional action is the only way to combat metropolitan America’s pronounced racial segregation and sharp disparities in local wealth, local tax bases, and the quality of local services.”<sup>236</sup> In 1990, regionalism was brought to the forefront of legal scholarship by Professor Richard Briffault’s groundbreaking critiques of localism in a two-part article published by the *Columbia Law Review*:<sup>237</sup> *Our Localism: Part I—The Structure of Local Government Law*<sup>238</sup> and *Our Localism: Part II—Localism and Legal Theory*.<sup>239</sup>

### B. New Regionalism

Today, strict adherence to regionalism or localism is waning in lieu of a theory called “New Regionalism” that incorporates ideals from both factions.<sup>240</sup> Professor Sheryll Cashin defines New Regionalism as “any attempt to develop regional governance structures or interlocal cooperative arrangements that better distribute regional benefits and burdens.”<sup>241</sup> In other words, New Regionalism is analogous to the theory of cooperative

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<sup>234</sup> See generally Reynolds, *supra* note 27 (detailed discussion of Regionalism and New Regionalism).

<sup>235</sup> See RUSK, *supra* note 130, at 85-119; see also Georgette Chapman Poindexter, *Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses*, 47 WASH. U. J. URB. & CONTEMP. L. 3, 24-25 (1995) (contending that regional tax policies, “link[ing] the suburban tax base with the city budget” will remedy the impact of “poverty-related expenses” on inner city residents). See generally MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* (1997).

<sup>236</sup> Reynolds, *supra* note 27, at 110.

<sup>237</sup> See *id.* at 108-09.

<sup>238</sup> Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990).

<sup>239</sup> Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346 (1990).

<sup>240</sup> See Reynolds, *supra* note 27, at 112 (stating that New Regionalism “looks for regional answers to metropolitan area inequalities through a lens that is tempered with the pragmatic realization that proposals to eliminate existing local government units are unlikely to succeed”).

<sup>241</sup> Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter*, *supra* note 72, at 2028.



federalism,<sup>242</sup> but deals with cooperative governance between the states, local municipalities, and metropolitan governments. As of 2000, twenty-seven metropolitan areas in the United States adopted tax schemes premised upon New Regionalism.<sup>243</sup> In particular, Portland, Oregon, Seattle, Washington, and St. Paul and Minneapolis, Minnesota, are cities where government officials have taken steps to incorporate the ideals of New Regionalism into local, metropolitan, and state governance.<sup>244</sup> Professor Cashin posits that the wealth inequities and racial segregation caused by Professor Tiebout's model are best dealt with by New Regionalism, but should be facilitated by the Federal Government.<sup>245</sup> Even early analyses of the inequities attached to Professor Tiebout's theory contend that the Federal Government is best equipped to handle redistributive measures.<sup>246</sup>

### C. Reform Initiatives Do Not Explicitly Deal with Race and Racism

What reform policies fail to discuss in much detail, or at all, is how government officials and the public they serve should go about dismantling their racial biases.<sup>247</sup> However, in 2005, Professor Cashin put forth a theory that builds upon the work of, among others, Professor Derrick Bell and Civil Rights leader Bayard Rustin, and presents a theory of cross-racial coalition building to address racial inequities in the United States.<sup>248</sup> Professor Cashin argues for a grassroots movement similar to that of the Civil Rights Era consisting of "multiracial, mixed-income alliances," whose purpose is to use the political process to create equitable legislation to remedy racial and socioeconomic inequities.<sup>249</sup> While a grassroots movement as such will certainly result in social and economic gains for underrepresented individuals and groups in the United States, like the Civil Rights Movement there is no guarantee that it will also result in amicable race relations.

Despite reform initiatives created to ameliorate institutional discriminatory measures, history shows that society still manages to promote racist ideals, thereby allowing detrimental externalities to persist.

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<sup>242</sup> Cooperative federalism is defined as the "[d]istribution of power between the federal government and the states in which each recognizes the powers of the other while jointly engaging in certain governmental functions." BLACK'S LAW DICTIONARY 644 (8th ed. 2004).

<sup>243</sup> Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter*, *supra* note 72, at 2028.

<sup>244</sup> *Id.* at 2028-29.

<sup>245</sup> *Id.* at 2048.

<sup>246</sup> *E.g.*, Mills & Oates, *The Theory of Local Public Services and Finance*, *supra* note 12, at 10.

<sup>247</sup> *But see* Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN'S L. REV. 253 (2005).

<sup>248</sup> *See id.* at 254-55.

<sup>249</sup> *Id.* at 268-77.

It follows that until the United States and its inhabitants explicitly deal with the issue of race and racism, protective measures concerning marginalized minorities living in the United States will only amount to figurative, flimsy, and ineffective gestures of reconciliation.<sup>250</sup>

## VII. CONCLUSION

Ultimately, the disparate effects resulting from urban sprawl—the real-world versions of Professor Tiebout’s model—undermine the potential and actual economic growth of local communities and consumer-voters alike. Consequently, intrajurisdictional gains resulting from the urban sprawl model are significantly outweighed by their ameliorating effects on lower-income consumer-voters residing in communities that operate under Professor Tiebout’s theory as well as communities unable to compete with their exclusive neighbors.

The negative impact of urban sprawl, which is further frustrated by wealth disparities amongst the general population living in the United States, has a greater effect on black Americans than white Americans. Moreover, urban sprawl only provides temporary benefits for winning—affluent and racially homogenous—communities. Because Professor Tiebout did not take factors such as racial preferences into account when working on *A Pure Theory of Local Expenditures*, it is difficult to put his theory to work in a practical setting. At the local level, voluntary racial segregation trumps individual citizen’s preferences for public service packages or community benefits. This means that local governments go without the incentives to provide efficient and helpful public services and consumer-voters go without the full benefit of service packages that they pay for. As a result, de facto racial segregation goes against the interests of every individual residing in the United States.

The bottom line is that the cantankerous effects of over 200 years of slavery, approximately 100 years of Jim Crow, and animus towards racial minorities throughout the history of the United States have fused racism into the American psyche. Moreover, for many Americans still living today, de jure racism was once an actual fact of life, not an archaic body of laws that has barely evaporated from modern consciousness. As Professor Douglas J. Besharov points out, “[w]e tend to forget that Jim Crow was a reality for many African Americans as recently as the 1960s and early 1970s.”<sup>251</sup>

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<sup>250</sup> See, e.g., Ngai Pindell, *Is There Hope for HOPE VI?: Community Economic Development and Localism*, 35 CONN. L. REV. 385, 400 (2003) (arguing that HOPE VI, a federally mandated program facilitating mixed-income housing to alleviate concentrated poverty and racial segregation “is ill-equipped for the task because it does not explicitly engage racial categories”).

<sup>251</sup> Besharov, *supra* note 90, at 45.

Until this “color line,” which has kept the United States divided since its formation, is no longer an issue, it will only bring unnecessary psychological, emotional, and physical harm to current and future generations. Thus, it is imperative that measures taken to help “uplift” blacks or any other marginalized minority group in the United States are not only sincere and unpaternalistic, but strive to eradicate systemic discriminatory barriers while fostering relationships between groups from different racial, ethnic, and religious backgrounds.

