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Welfare Reform in a Global Economy

*Steven D. Schwinn**

I. INTRODUCTION

Just over ten years ago, Congress and the Clinton administration passed perhaps the most significant piece of domestic social legislation since the New Deal. The Personal Responsibility and Work Opportunity Reconciliation Act,¹ more commonly known as federal “welfare reform,” was unquestionably important in terms of its new requirements for welfare recipients. But it was perhaps equally important as a reflection of the federal government’s broader conception of the proper roles of the government and welfare recipients in a government income support program.

More particularly, welfare reform reflected the federal government’s priority of work as a critical way for recipients to gain economic independence from welfare.² The new welfare program thus required recipients to work (or to prepare for work, through an educational program) in exchange for their welfare checks,³ and, as a motivator, it limited the amount of time any recipient would be eligible to receive welfare benefits.⁴ These provisions were thought simultaneously to promote economic independence among welfare recipients and to reduce or eliminate any perverse economic incentives that may have existed under the previous program to stay on (better paid) welfare and avoid the (worse paid) job

* Associate Professor of Law, The John Marshall Law School. This paper is based on the author’s presentation at *The Journal of Gender, Race & Justice* symposium, *One Act, Ten Years, and Thousands of Families: Welfare Reform in Contemporary America*. The author wishes to thank the members of the *Journal* for hosting a truly outstanding symposium and for their excellent editorial work on this paper. All errors are, of course, my own. The author also wishes to thank his fellow panelists and other symposium participants for thought-provoking presentations and discussions, which contributed to the development of this article.

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 1996 U.S.C.A.N. (110 Stat.) 2105 (codified as amended in scattered sections of 42 U.S.C.).

2. See 42 U.S.C. § 601(a)(2) (2000) (stating that a purpose of welfare reform is to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage”).

3. See 42 U.S.C. § 602(a)(1)(A) (2000) (setting out the requirements for state plans, including certification of recipients’ work activities, in order to receive the federal block grant); 42 U.S.C. § 607 (setting out the mandatory work requirements for recipients).

4. 42 U.S.C. § 608(a)(7) (2000).

market.⁵

At the same time, the federal government sought to devolve much of the responsibility for welfare reform to the states, giving states greater flexibility to design programs better tailored to their individual needs. The federal government effected this devolution through a block grant to each state, the level of which depended at least in part upon the state's success in placing recipients in the job market.⁶ Thus, the federal government assigned to the states the responsibility of carrying out its priority and mandate of putting recipients to work.

If states had complete control over their labor markets, this kind of devolution might make some sense (leaving aside other significant problems with this scheme). States could, for example, adjust their macroeconomic levers to encourage growth and job creation in sectors that could provide well-paid, long-term, sustainable jobs with good health care, child care, and retirement benefits. States could then place their welfare recipients in these good jobs under their welfare reform programs, achieving the federal mandate of moving recipients from welfare to work. In other words, an individual state could influence the demand side of the labor market so that its welfare recipients on the supply side could move from welfare to good jobs and thus achieve economic self-sufficiency.

But as it is, states do not significantly control their labor markets.⁷ Instead, the U.S. domestic labor market is increasingly shaped by globalization.⁸ In a global economy, state labor markets are more and more

5. See, e.g., H.R. REP. NO. 104-725, at 262 (1996) (Conf. Rep.), as reprinted in 1996 U.S.C.C.A.N. 2649, 2650 ("For the first time ever, able-bodied welfare recipients will be required to work for their benefits."); CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980 9 (1984) (arguing that AFDC rules made receiving welfare more attractive than working). But see David T. Ellwood & Lawrence H. Summers, *Is Welfare Really the Problem?*, 83 Pub. Int. 57 (1986) (finding little evidence that welfare policies increased the unemployment rate by reducing work incentives). For discussions about the meaning of work in a welfare-to-work program, see generally Noah D. Zatz, *What Welfare Requires from Work*, 54 UCLA L. REV. 373 (2006) (examining the normative underpinnings of welfare-to-work requirements); Amy L. Wax, *Something for Nothing: Liberal Justice and Welfare Work Requirements*, 52 EMORY L. J. 1 (2003) (examining the normative underpinnings of welfare-to-work requirements); Amy L. Wax, *A Reciprocal Welfare Program*, 8 VA. J. SOC. POL'Y & L. 477 (2001) (exploring the reciprocity principle in welfare-to-work requirements). For histories of work and welfare, see generally Larry L. Orr & Felicity Skidmore, *The Evolution of the Work Issue in Welfare Reform*, in WELFARE REFORM IN AMERICA (Paul M. Sommers ed. 1980); Joanna Weinberg, *The Dilemma of Welfare Reform: "Workfare" Programs and Poor Women*, 26 NEW ENG. L. REV. 415 (1991).

6. 42 U.S.C. § 603 (2000).

7. See *infra* Part II.

8. See generally LORI G. KLETZER, JOB LOSS FROM IMPORTS: MEASURING THE COSTS (2001) (measuring the effects of trade liberalization on the U.S. labor market); J. Bradford Jensen & Lori G. Kletzer, *Tradable Services: Understanding the Scope and Impact of Services Outsourcing*, The Peterson Institute for International Economics (May 2006), available at <http://www.petersoninstitute.org/publications/papers/paper.cfm?ResearchID=638> (analyzing the effects of outsourcing on the service sector).

the product of international economic forces, including federal government economic policies related to globalization.⁹ Relative to global forces and the federal government, individual states have comparatively little control over the size, shape, and composition of their labor markets,¹⁰ yet they must nevertheless deal with their internationalized labor markets by finding good, economically sustainable jobs for their welfare recipients. And in the global economy, these jobs are becoming more and more scarce.¹¹

Federal welfare reform's devolved welfare-to-work mandates thus require the states to move their welfare recipients to economically sustainable jobs without giving them the full set of policy instruments to succeed. More particularly, states must move recipients from welfare to work in a political environment where only the federal government—not the states—controls the macroeconomic levers that impact the domestic economy. And states have to do this in a global economic environment that seems to be handing them exactly the wrong kinds of jobs.

This article explores some of the tensions between welfare reform and globalization. It first describes how the federal government—not the states—controls the primary macroeconomic policy instruments to influence the domestic labor market. And because states must deal with the domestic labor market in putting their welfare recipients to work, the devolution of welfare-to-work mandates is in tension with the federal political order in a global economy.

Next, it argues that globalization has produced actual labor market adjustments in the United States such that available jobs for welfare recipients are increasingly unlikely to provide the means for sustainable, long-term economic independence. As the domestic labor market has adjusted to globalization over the past decade or so, it has moved away from a manufacturing base, with relatively well-paid and stable jobs, to a service-sector base.¹² New service-sector jobs are at one of the two opposite ends of the education and income ranges, demanding either high education for well-paid managerial and professional jobs, or compensating relatively poorly for low-education jobs in human services, food services, and facilities maintenance.¹³ When welfare recipients lack the higher or specialized

9. See *infra* Part II (arguing that the federal government, not the states, controls the macroeconomic levers that shape state labor markets in a global economy).

10. *Id.*

11. See *infra* Part III (arguing that labor market trends in the U.S. suggest that jobs available to welfare recipients in a global economy are low-paying, part-time, temporary, seasonal, without benefits, or otherwise unable to sustain workers over the long term).

12. See *infra* Part III (examining labor market trends and arguing that the U.S. economy has moved away from a manufacturing-based economy to a service-sector economy).

13. *Id.* (reviewing labor market trends that show that the growing service sector is producing jobs that are either high-income—requiring specialized or advanced education—or low-income).

education to attain managerial or professional service-sector jobs (as they often do), states must place welfare recipients in education and training programs to qualify for higher-paid managerial and professional service-sector jobs or place them in lower-paid, economically unsustainable jobs. Neither option is very appealing for the states: the former option involves greater expense and pushes against the federal limits on education and training as a welfare reform “work activity”;¹⁴ the latter option simply rotates recipients back into the ranks of the working poor or into a cycle of poverty. And regulations pursuant to reauthorization of welfare reform in the Deficit Reduction Act of 2005¹⁵ only tightened states’ abilities to use education and training as work requirements¹⁶ and stiffened work requirements,¹⁷ nearly ensuring that states will adopt the latter option out of short-term expediency and thus create something like a permanent underclass to staff the new low-skill, low-paying service-sector jobs resulting from forces in the global economy.

Welfare-to-work as a welfare reform program cannot achieve its economic goals over the long term by devolving job-placement responsibility to the states in our federal system and in a global economy. The future of welfare reform therefore needs to address the fundamental federalism and labor-market tensions. If it intends to succeed as a devolved welfare-to-work program, it must significantly loosen its work participation requirements and its requirements limiting how education counts toward workforce participation rates in order to give states more flexibility to prepare and place workers in a globalized labor market. These changes would help states adopt the truly flexible programs needed to place welfare recipients in economically sustainable jobs in a market that is mostly not of their design or creation. Short of adopting these changes, welfare reform can only succeed as a devolved program by becoming a trade adjustment assistance program or an unemployment insurance program—i.e., a program that provides a safety net for workers who lose their jobs because of trade or globalization—and not a program that seeks to move recipients from welfare to work.

14. 42 U.S.C. § 607(c) (2000).

15. Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 136 (Feb. 8, 2006).

16. 45 C.F.R. § 261.33 (2007); *see* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454-01, 37,460-37,461 (June 29, 2006) (explaining the tighter requirements to use education and training as part of a state’s work participation rate under the new regulations).

17. 45 C.F.R. §§ 261.30-36 (2007); *see* Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,454-01, 37,457-37,459 (June 29, 2006) (discussing the stricter work requirements under the new regulations).

II. FEDERALISM TENSIONS

The federalism tensions in welfare reform arise as a result of the federal government's nearly exclusive authority to set macroeconomic policy and thus shape the domestic labor market in a global economy. Even though the states have little or no control over federal economic policy and global economic forces, they nevertheless are left to deal with the effects of globalization by trying to place welfare recipients in a state job market largely created by federal policy and globalization. The net result is a deep tension between welfare reform's devolved mandate to states to put welfare recipients to work, on the one hand, and states' relative lack of control over the shape and composition of the domestic job market, on the other. This section explores some of the trade and trade-related economic policies through which the federal government alone largely shapes the domestic labor market in a global economy.

A. Trade

The federal government's powers over international and foreign affairs are broad and exclusive, even if they are not expressly recited in the U.S. Constitution.¹⁸ In the area of international economic affairs and trade, however, the federal government's plenary powers are clear: unlike the federal government's more general powers in foreign affairs, the federal government's exclusive powers over international trade and commerce are specifically delineated in the Constitution.¹⁹ For example, by the plain terms of the Constitution, only Congress may "regulate Commerce with foreign Nations"²⁰ and "lay and collect Taxes, Duties, Imposts and Excises,"²¹ and only the president has the power to "make Treaties."²² States, on the other hand, are specifically prohibited from "lay[ing] any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws"²³ and from "enter[ing] into any Treaty, Alliance, or Confederation."²⁴ Moreover, under the Supremacy Clause²⁵ Congress has

18. *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304 (1936); see *Zschernig v. Miller*, 389 U.S. 429 (1968) (holding that states may not intrude into foreign affairs).

19. See John Linarelli, *International Trade Relations and Separation of Powers Under the United States Constitution*, 13 DICK. J. INT'L L. 203 (1995) (providing a more detailed discussion of the relative powers of international commerce as between Congress and the President).

20. U.S. CONST. art. I, § 8, cl. 3 (the "foreign commerce clause").

21. U.S. CONST. art. I, § 8, cl. 1 (the "import-export clause").

22. U.S. CONST. art. II, § 2, cl. 2.

23. U.S. CONST. art. I, § 10, cl. 2.

24. U.S. CONST. art. I, § 10, cl. 1.

the power to preempt state laws,²⁶ and state laws may not conflict with a federal statute or treaty.²⁷

The upshot of these provisions is that states have an extremely narrow range within which they may regulate foreign trade. And in any event, they may not regulate foreign trade as such, discriminating in their policies by, say, countries of origin or foreign goods of a particular economic sector—the way Congress might. Therefore, states may not seek to encourage or discourage particular imports (again, the way Congress might) in an effort to protect their own industries or to advantage or disadvantage particular countries or particular foreign goods. Instead, any state regulation or tax of foreign trade must not uniquely burden international trade in relation to domestic trade and must not interfere with federal trade policy.²⁸ In short, “[i]n international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power.”²⁹

At the same time, the federal government influences the economic conditions in the states through trade agreements initiated, negotiated, and implemented at the federal level. States have little influence on these agreements, yet they must deal with the economic effects of them through their devolved state welfare reform policies.

This section first examines limits on state involvement in regulating international trade. It then examines some ways in which the federal government regulates trade, with effects on state economies.

1. State Limitations on Regulating International Trade

Three provisions of the U.S. Constitution restrict states in their ability to affect their local labor markets through international trade: the Dormant Foreign Commerce Clause,³⁰ the Import-Export Clause,³¹ and the Supremacy Clause.³² This subsection briefly examines each.

The Supreme Court, in *Japan Line, Ltd. v. County of Los Angeles*,

25. U.S. CONST. art. VI, cl. 2.

26. *Gibbons v. Ogden*, 9 Wheat. 1, 211, 6 L.Ed. 23 (1824); *Savage v. Jones*, 225 U.S. 501, 533 (1912).

27. *Hines v. Davidowitz*, 312 U.S. 52, 66–67 (1941) (holding that a state law is preempted when it “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”).

28. *Bd. of Trustees v. United States*, 289 U.S. 48, 59 (1933).

29. *Id.*

30. U.S. CONST. art. I, § 8, cl. 3.

31. U.S. CONST. art. I, § 8, cl. 1.

32. U.S. CONST. art. IV, cl. 2.

defined the narrow range of allowable state taxes affecting foreign commerce under the Dormant Foreign Commerce Clause.³³ The Court ruled that the Dormant Foreign Commerce Clause restricts state regulation of foreign commerce even more than the Dormant Commerce Clause restricts state regulation of interstate commerce.³⁴ Thus, “[w]hen a State seeks to tax the instrumentalities of foreign commerce, two additional considerations, beyond [the traditional Interstate Commerce Clause considerations], come into play.”³⁵ First, “taxes [must] be apportioned among taxing jurisdictions, so that no instrumentality of commerce is subjected to more than one tax on its full value . . . [and] no jurisdiction may tax the instrumentality in full.”³⁶ Second, state taxes must not “impair federal uniformity in an area [like foreign commerce] where federal uniformity is essential.”³⁷

The Court’s rationale for these additional considerations under the Dormant Foreign Commerce Clause reflects and underscores the federal government’s preeminence over the states in the area of foreign commerce:

A state tax on instrumentalities of foreign commerce may frustrate the achievement of federal uniformity in several ways. If the State imposes an apportioned tax, international disputes over reconciling apportionment formulae may arise. If a novel state tax creates an asymmetry in the international tax structure, foreign nations disadvantaged by the levy may retaliate against American-owned instrumentalities present in their jurisdictions. Such retaliation of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer. If other States followed the taxing State’s example, various instrumentalities of commerce could be subjected to varying degrees of multiple taxation, a result that would plainly prevent this Nation from ‘speaking with one voice’ in regulating foreign commerce.³⁸

In other words, state policies discriminating against (or in favor of) certain foreign countries or certain foreign goods in order to effect state economic goals run up against principles of national economic interest. States may not run their own international trade policies because doing so may adversely affect other states and the nation as a whole. Such state policies are therefore unconstitutional under the Dormant Foreign

33. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979).

34. *Id.* at 446 (“When construing Congress’ power to ‘regulate Commerce with foreign nations,’ a more extensive constitutional inquiry is required.”).

35. *Id.*

36. *Id.* at 447.

37. *Id.* at 448.

38. *Id.* at 450–51.

Commerce Clause.

The Court in *Japan Line* thus overturned a California ad valorem property tax on Japanese shipping companies' cargo containers that were based, registered, and subjected to full property tax in Japan, because the California tax resulted in "multiple taxation of the instrumentalities of foreign commerce."³⁹ Similarly, the Court in *Kraft Gen. Foods, Inc. v. Iowa Dep't. of Revenue and Fin.* overturned a state law that treated dividends from foreign subsidiaries less favorably than dividends from domestic subsidiaries.⁴⁰ More recently, the Fifth Circuit in *Piazza's Seafood World, LLC v. Odom* overturned a state labeling law that allowed only catfish grown in the United States—and not catfish grown outside the United States—to carry the label "catfish."⁴¹

In contrast, the Court has upheld under the Dormant Foreign Commerce Clause state taxes that do not inevitably result in multiple taxation.⁴² But these allowable state taxes may only tax economic activity within the state and may not discriminate against particular foreign goods.⁴³ Thus, states are virtually helpless under the Dormant Foreign Commerce Clause to effect state economic policy in relation to foreign trade.

While the Dormant Foreign Commerce Clause severely restricts such state policies, they are even further curbed by the Import-Export Clause. Like the Dormant Foreign Commerce Clause,⁴⁴ the Import-Export Clause demands that the federal government speak with one voice on regulation of international commerce and that states' policies be consistent with each other.⁴⁵ But the Import-Export Clause adds that state policies may not divert import tax revenues from the federal government,⁴⁶ thus adding yet one more impediment to the states' ability to effect state economic policy

39. *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 451 (1979).

40. *Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue and Fin.*, 505 U.S. 71, 79 (1992) (holding that the state law violated the Dormant Foreign Commerce Clause, even where the state's economy was not a direct beneficiary of the policy).

41. *Piazza's Seafood World, LLC v. Odom*, 448 F.3d 744, 751–52 (5th Cir. 2006).

42. See, e.g., *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159 (1983) (holding that a California corporate franchise tax based on a domestic-based multinational corporation's payroll, property, and sales in California did not result in multiple taxation and therefore did not violate the Dormant Foreign Commerce Clause); *Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60 (1993) (holding that a Tennessee sales tax based on in-state proceeds from leases did not result in multiple taxation and therefore did not violate the Dormant Foreign Commerce Clause); *Barclays Bank PLC v. Franchise Tax Bd. of California*, 512 U.S. 298 (1994) (holding that the California tax at issue in *Container Corp.* as applied to domestic corporations with foreign parents or to foreign subsidiaries did not violate the Dormant Foreign Commerce Clause).

43. See *supra* notes 30–42.

44. *Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60, 76 (1993).

45. *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285–86 (1976).

46. *Id.*

through foreign trade.

Finally, federal preemption and the Supremacy Clause foreclose the states' ability to implement economic policies or regulations in areas where Congress has "occup[ie]d the field"⁴⁷ or where state law conflicts with a federal statute.⁴⁸ The most notable recent example of preemption and the Supremacy Clause restricting a state's policies in international trade comes from Massachusetts's "Burma Law."⁴⁹ That law restricted Massachusetts state agencies from purchasing goods or services from companies doing business with Burma (also known as Myanmar) as a response to political repression and other human rights abuses by the Burmese military government.⁵⁰ The Supreme Court ruled that the law was inconsistent with federal law imposing sanctions on Burma⁵¹ and that it was therefore invalid under the Supremacy Clause.⁵²

47. *California v. ARC America Corp.*, 490 U.S. 93, 100–02 (1989) (holding that federal antitrust laws do not occupy the field of antitrust, and thus preempt state laws, where "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies").

48. *Id.* at 100–01; *Hines v. Davidowitz*, 312 U.S. 52, 66–67 (1941).

49. 1996 Mass. Acts 239, ch. 130 (codified at Mass. Gen. Laws §§ 7:22G–7:22M). See Terrence Guay, *Local Government and Global Politics: The Implications of Massachusetts' "Burma Law"*, 115 POL. SCI. Q. 353 (2000) (providing an overview of Massachusetts's Burma Law). For analysis of Massachusetts's Burma Law in the context of federalism and states' abilities to enact trade sanctions, see Alejandra Carvajal, *State and Local "Free Burma" Laws: The Case for Sub-National Trade Sanctions*, 29 LAW & POL'Y INT'L BUS. 257 (1998); Jennifer Loeb-Cederwall, *Restrictions on Trade with Burma: Bold Moves or Foolish Acts?*, 32 NEW ENG. L. REV. 929 (1998); Brian Owens, *The World Trade Organization and States' Rights: Will Foreign Threats Over Massachusetts' Burma Law Lead to a Domestic Backlash Against International Trade Agreements?*, 21 HASTINGS INT'L & COMP. L. REV. 957 (1998). For similar discussions of states' South Africa laws, see Peter Spiro, Note, *State and Local Anti-South Africa Action as an Intrusion upon the Federal Power in Foreign Affairs*, 72 VA. L. REV. 813 (1986); Lynn Berat, *Undoing and Redoing Business in South Africa: The Lifting of the Comprehensive Anti-Apartheid Act of 1986 and the Continuing Validity of State and Local Anti-Apartheid Legislation*, 6 CONN. J. INT'L L. 7 (1990). State sanctions against South Africa in the 1980s were not preempted, because they were consistent with the federal Comprehensive Anti-Apartheid Act of 1986. See, e.g., *Bd. of Trustees v. Mayor & City Council of Baltimore*, 562 A.2d 720, 744–49 (Md. 1989), *cert. denied*, 493 U.S. 1093 (1990).

50. *Nat'l Foreign Trade Counsel v. Baker*, 26 F. Supp. 2d 287, 291 (D. Mass. 1988) ("The Commonwealth concedes that the statute was enacted solely to sanction Myanmar for human rights violations and to change Myanmar's domestic policies. Indeed, its legislative history makes this intent clear.").

51. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997, § 570, 110 Stat. 3009-166 to 3009-167 (enacted by the Omnibus Consolidated Appropriations Act, 1997, § 101(c), 110 Stat. 2009-121 to 2009-172).

52. *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373–74 (2000). The lower court held that the Massachusetts law also violated the Dormant Foreign Commerce Clause and the federal government's exclusive power over foreign relations. *Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 45 (1st Cir. 1999); see also *Antilles Cement Corp. v. Vila*, 408 F.3d 41 (1st Cir. 2005) (remanding the case to determine whether Puerto Rico's law prohibiting the use of non-Puerto Rican cement in construction projects funded by Puerto Rico or by the United States was consistent with the federal Buy American Act, and thus whether the Puerto Rican law was unconstitutional under the Supremacy Clause).

Notwithstanding the application of the Supremacy Clause to the Massachusetts Burma Law, an international development in this case perhaps even more manifestly illustrates the lack of authority of the states in international trade. Soon after Massachusetts enacted its Burma Law, the European Union (EU) and Japan filed complaints with the World Trade Organization (WTO) claiming that the law violated provisions of the Agreement on Government Procurement.⁵³ Both parties agreed to suspend the WTO proceedings pending the outcome of the litigation in U.S. courts, but they or other WTO member nations are free to reinstate complaints for state laws like the Burma Law that infringe upon U.S. commitments under international trade agreements.⁵⁴ Because individual U.S. states have no standing at the WTO,⁵⁵ their attempts to regulate international trade in a manner inconsistent with U.S. policy and U.S. international commitments may be wholly at the mercy of an entirely different level of government—the WTO.⁵⁶

To be sure, U.S. law does permit some very limited state involvement in federal international trade policy. For example, the federal statute enacting the latest round of the Uruguay Agreements requires consultation between the United States Trade Representative and the states.⁵⁷ But it also requires states to cooperate with the federal government in WTO disputes,⁵⁸ and it prohibits the invalidation in U.S. courts of any state law on the ground that its application is inconsistent with any of the Uruguay Round Agreements.⁵⁹ These provisions only reinforce the constitutional primacy of the federal government in trade policy.

Despite states' lack of constitutional authority to adopt trade policies,

53. *Crosby*, 530 U.S. at 383, n.19.

54. See General Agreement on Tariffs and Trade, Articles XXII and XXIII, available at http://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf (establishing procedures for enforcement of trade agreements under the GATT); Final Agreement Establishing the World Trade Organization, Annex 2, Dispute Settlement Understanding, available at http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf (incorporating the principles of GATT Articles XXII and XXIII and setting out the rules for trade dispute settlement at the WTO).

55. See General Agreement on Tariffs and Trade, Articles XXII and XXIII (permitting only “contracting parties” to a trade agreement to lodge a dispute at the WTO); Final Agreement Establishing the World Trade Organization, Annex 2, Dispute Settlement Understanding (permitting only WTO “members” to lodge a trade dispute at the WTO). Article XXXIII of the General Agreement on Tariffs and Trade limits membership by accession to those governments that possess “full autonomy in the conduct of its external commercial relations.” The General Agreement on Tariffs and Trade (1994) incorporated this provision and adopted this limitation for WTO membership. See *supra* notes 30–52 and accompanying text (explaining why U.S. states do not qualify for WTO membership).

56. *But see infra* note 60 and accompanying text.

57. 19 U.S.C. § 3512(b)(1)(A) & (B) (2000).

58. 19 U.S.C. § 3512(b)(1)(C) (2000).

59. 19 U.S.C. § 3512(b)(2)(A) & (B) (2000).

states nevertheless have developed expertise in international trade in order to attract new investment, to promote exports of goods and services produced within their borders, and—to the extent possible under constitutional restrictions—to protect their local industries from import competition.⁶⁰ While these efforts certainly have some impact in terms of interstate competition for investment and promotion of exports of local goods and services, their impact is far less significant in terms of international competition for investment and promotion and protection of local industries on the international stage.⁶¹

In short, constitutional restrictions on the states' ability to implement international trade policies designed to promote and protect local industries and jobs, and more generally to effect positive economic development within the state, are extremely limited. Yet international forces are increasingly important to states' economic prospects. The net result is that states are increasingly unable to forge their desired path of economic growth unilaterally; they are more and more at the mercy of the international economy, regulated in part through U.S. trade policy, over which states have little control. Thus, when the federal government devolves welfare-to-work policies and mandates to the states, it creates a tension: the federal government demands that states succeed in moving welfare recipients into the workplace while states have less and less influence over the size and shape of their economies and workforces.

2. Federal Regulation of International Trade

States' lack of power over trade policy is amplified by the federal government's exertion of its power, particularly since the early 1990s—a period significantly overlapping with welfare reform. That period has seen an extraordinary amount of activity in international trade, and most of it has opened up or liberalized trade. The federal government has negotiated and

60. See generally The National Governors Association "Best Practices" on International Trade and Competitiveness, <http://www.ncsl.org> (select "Social, Economic, & Workforce Programs" from the NGA Best Practices menu; then follow "International Trade and Competitiveness") (last visited Feb. 9, 2008) (providing resources for governors related to state trade policies); The National Conference of State Legislatures "Issue Area" on Economic Development and Trade, <http://www.ncsl.org/programs/econ/et.htm> (last visited Feb. 9, 2008) (providing resources for state legislatures related to state trade policies); State of California Business, Transportation, and Housing Agency, Economic Development Programs and Initiatives, <http://www.bth.ca.gov/programs/initiatives/itp.asp> (last visited Feb. 9, 2008) (outlining California's trade initiatives to attract foreign investment and increase California's exports).

61. States compete with each other for foreign investment and export promotion on equal footing, i.e., they are all subject to the same federal trade policies. But they do not compete with foreign nations for foreign investment and export promotion on equal footing (in the way economically autonomous nations compete with each other) because they do not significantly control their own terms of trade. In other words, the impact of states' trade efforts in relation to foreign countries is constrained by their inability to set their own trade policies.

implemented multilateral trade agreements, regional free trade agreements, and a host of bilateral trade agreements, which has liberalized trade in both goods and services.⁶² While there is some dispute as to the precise magnitude of the impact of these agreements (and even how to measure the impact of the agreements), there is a consensus that these agreements have had an important impact on the national economy.⁶³

The early 1990s saw three major developments in U.S. trade policy that moved the United States toward more liberalized trade with major trading partners. First, the Clinton Administration promoted, and Congress narrowly passed, the North American Free Trade Agreement (NAFTA), which opened trade between the United States, Mexico, and Canada.⁶⁴ NAFTA debates were particularly contentious, as detractors argued that it would result in the loss of U.S. manufacturing jobs to Mexico as manufacturers moved plants south in search of cheaper labor.⁶⁵ Disputes resulted in environmental and labor “side-agreements,” designed to mitigate harm to the environment and adverse economic effects of NAFTA.⁶⁶ Second, the Clinton administration hosted the 1993 Asian Pacific Economic Cooperation (APEC) forum in Seattle in an attempt to patch-up trade tensions with Japan and China—two major trading partners—and to open U.S. trade relations with the APEC region, the fastest-growing region in the world.⁶⁷ The Administration granted continuing most-favored nation status to China but made such status contingent upon compliance with certain human rights norms in the future.⁶⁸

62. See The Office of the United States Trade Representative, Trade Agreements, http://www.ustr.gov/Trade_Agreements/Section_Index.html (last visited Feb. 9, 2008) (providing a list of trade agreements to which the United States is a party).

63. There is a vast body of literature arguing the effects of trade in the U.S. economy (and what, if anything, to do about it). Authors agree that international trade affects local labor markets, but they do not always agree that this is an insurmountable problem. For two examples on the pro-trade side of the debate, see JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION*, 228–39 (2004) (recognizing that liberalized trade impacts labor markets and arguing for policies to mitigate the effect on workers); and MARTIN WOLF, *WHY GLOBALIZATION WORKS* 178–79 (Yale Univ. Press 2004) (discussing the impact of trade on U.S. manufacturing jobs). For two examples on the anti-trade, or fair-trade, side of the debate, see generally Jeremy Rifkin, *New Technology and the End of Jobs*, in *THE CASE AGAINST THE GLOBAL ECONOMY* (Jerry Mander and Edward Goldsmith eds., Sierra Club Books 1996) (arguing that technological changes in a global economy are leading to a changed U.S. labor market); and JEFF FAUX, *THE GLOBAL CLASS WAR: HOW AMERICA’S BIPARTISAN ELITE LOST OUR FUTURE—AND WHAT IT WILL TAKE TO WIN IT BACK* (2006) (arguing that unfettered free trade impacts domestic labor markets and creates a global underclass). See also I.M. DESTLER, *AMERICAN TRADE POLITICS* 314–16 (4th ed. 2005) (reviewing some of the effects of international trade on U.S. labor markets).

64. Pub. L. No. 103-182, 107 Stat 2057 (1993). NAFTA passed the House of Representatives by a 234 to 200 vote; it passed the Senate by a 61 to 38 vote.

65. DESTLER, *supra* note 63, at 199–206.

66. Pub. L. No. 103-182, Tit. V, Subtit. D, Pt. I. (1993).

67. DESTLER, *supra* note 63, at 206–08.

68. Exec. Order No. 12,850, 3 C.F.R. 607 (1993). “Most favored nation” treatment (also called

Third, the Uruguay Round of international trade negotiations wrapped up, culminating in a host of trade liberalization agreements and the formation of the WTO, a new trade and dispute resolution body to succeed the General Agreement on Tariffs and Trade (GATT).⁶⁹ The substantive coverage of the Uruguay Round was comprehensive, but its sweep was especially notable: as of September 1994, it included 125 member countries; today the WTO includes 151 member countries, accounting for over 97% of global trade.⁷⁰

Since the early 1990s, the U.S. has initiated or completed a host of additional bilateral, regional, and multilateral trade negotiations.⁷¹ For example, the U.S. implemented the Central American and Dominican Republic Free Trade Agreement (CAFTA-DR) in August 2005.⁷² Other significant agreements, such as the WTO Doha Round and the Free Trade Area of the Americas (FTAA), remain on the table.⁷³

Most economists agree that trade liberalization, like that promoted in these agreements, yields net gains in output or gross domestic product (GDP), suggesting that net employment effects should be positive.⁷⁴ But economists also agree that trade liberalization yields adjustment between sectors as countries move to find new comparative advantages under the more liberalized regime.⁷⁵ This adjustment translates into lost jobs in certain sectors and gains in others.⁷⁶ These adjustments may vary across states, depending on an individual state's economic base and its place in the global economy. In short, state welfare reform programs are likely to face a state

"nondiscriminatory treatment") for a country means "treatment based on normal trade relations." 19 U.S.C. § 2481(9) (2000).

69. DESTLER, *supra* note 63, at 208–11; see generally World Trade Organization, http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (providing information about the background, history, and formation of the WTO) (last visited Nov. 12, 2007).

70. The World Trade Organization in Brief, at 7, available at http://www.wto.org/english/res_e/doload_e/inbr_e.pdf; see generally World Trade Organization, <http://www.wto.org> (providing general information on the WTO) (last visited Nov. 12, 2007).

71. See generally The Office of the U.S. Trade Representative, <http://www.ustr.gov/>, for background, status, and the United States's position on these and other international trade agreements.

72. Dominican Republic—Central America—United States Free Trade Agreement Implementation Act, Pub. L. No. 109-53, 119 Stat. 462 (2005).

73. See generally *supra* note 71.

74. See Scott C. Bradford, Paul L.E. Grieco & Gary Clyde Hufbauer, *The Payoff to America from Global Integration, in THE UNITED STATES AND THE WORLD ECONOMY* 65–109 (C. Fred Bergsten ed. 2005) (estimating that the long-run gain to the U.S. by removing all its trade barriers is between \$1,500 and \$2,000 per capita, annually).

75. See RICHARD E. CAVES, JEFFREY A. FRANKEL & RONALD W. JONES, *WORLD TRADE AND PAYMENTS*, 25–27 (10th ed. 2007) (describing the theory of comparative advantage in international trade); see also DAVID RICARDO, *THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION*, 81–99 (1971) (setting out the classical case for comparative advantage).

76. See *supra* note 63.

labor market that has evolved in important ways through trade policies of the federal government—forces over which the states have little or no control.

Moreover, when states are impacted by unfair or illegal international trade, they have little or no standing to challenge or remedy those effects. As discussed above, states have marginal protections under the WTO, but they are not parties to the WTO.⁷⁷ Thus, only the federal government, not the states, may initiate a challenge to foreign trade practices under the WTO.⁷⁸ Here is just one relatively recent example: the federal government represented U.S. interests in the dispute with the EU over U.S. subsidies to Boeing and EU subsidies to Airbus, and the federal government alone determined whether to lodge two complaints against the EU and its member countries that its government subsidies to Airbus ran afoul of their obligations under certain provisions of the Agreement on Subsidies and Countervailing Measures Agreement and the GATT.⁷⁹ The federal government spearheaded these efforts, notwithstanding the fact that the employment effects were felt primarily in a handful of states.⁸⁰

On the other side of the coin, only the federal government defends complaints by other countries against its own trade policies, often designed to protect American jobs. For example, the federal government alone unsuccessfully defended a complaint by a number of countries that the Continued Dumping and Subsidy Offset Act of 2000⁸¹ violated U.S. obligations under the WTO Anti-Dumping and Subsidies Agreements and the GATT.⁸² The federal government alone engaged foreign countries through the WTO process, even though effects of its decisions and those of the WTO were felt in state labor markets.

When trade disputes go to the WTO or a similar dispute settlement

77. See *supra* note 55 and accompanying text.

78. The AFL-CIO criticizes the Bush Administration for its failure to use the WTO dispute settlement process to challenge unfair or illegal trade practices of trading partners that affect American jobs. AFL-CIO Issue Brief, p. 4 (Aug. 2004), available at http://www.aflcio.org/issues/jobseconomy/jobs/upload/bushrecord_joboverseas.pdf.

79. Dispute Settlement, European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft, WT/DS347 (Jan. 31, 2006), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds347_e.htm; European Communities—Measures Affecting Trade in Large Aircraft, WT/DS 316 (Oct. 6, 2004), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm.

80. See generally Nils Meier-Kaienburg, *The WTO's "Toughest" Case: An Examination of the Effectiveness of the WTO Dispute Resolution Procedure in the Airbus-Boeing Dispute over Aircraft Subsidies*, 71 J. AIR L. & COM. 191 (2006) (providing background and an overview of this dispute).

81. Continued Dumping and Subsidy Offset Act of 2000, Pub. L. No. 106-387, 114 Stat. 1549A, codified at 19 U.S.C. § 1675c (2000).

82. Dispute Settlement, United States—Continued Dumping & Subsidy Offset Act of 2000, WT/DS 234 (Jan. 16, 2003), available at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds234_e.htm.

body, states are twice removed: only the federal government—not the states—has standing before the body, and the body—not the federal government or the states—renders a decision that affects the states. But even U.S. domestic programs that are designed to remedy unfair or illegal trade practices by trading partners are controlled by the federal government, not the states. Thus, for example, Section 301 of the Trade Act of 1974⁸³ authorizes the president to take certain retaliatory actions to redress unfair trade practices by other countries.⁸⁴ The president's use (or nonuse) of Section 301 has been the subject of serious domestic criticism; it clearly is a discretionary power that is not always used to promote fair trade and economic growth within the states.⁸⁵

Thus, the federal government is the primary, if not exclusive, sovereign responsible for initiating, negotiating, and implementing significant international trade agreements. States have little or no formal role in this area; they are, in fact, specifically precluded from involvement under federalism principles.⁸⁶ As a result, states are left to deal with the domestic economic effects of international trade agreements through their devolved welfare reform programs even though they have little to no influence over those economic effects.

B. Federal Trade-Related Policies

In addition to trade policy, the federal government has exclusive constitutional authority over myriad non-trade policies that nevertheless impact international trade. This section discusses just a few, dividing them into monetary policy and fiscal policy.

1. Monetary Policy

Monetary policy—manipulating the quantity of money in circulation in order to achieve certain macroeconomic goals—is the exclusive

83. 19 U.S.C. § 2411 (2005).

84. *Id.*

85. For example, the AFL-CIO filed a "Section 301 petition" on June 8, 2006, asking the Bush Administration to investigate and take retaliatory actions against China. The petition alleged that Chinese violations of workers' rights hurt U.S. workers and communities because multinational corporations moved U.S. jobs to China and because multinationals producing in China undercut U.S. manufacturers, resulting in U.S. job losses. The petition is available at http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/china_petition.pdf. On July 21, 2006, the Bush Administration in its discretion did not accept the petition. See http://www.ustr.gov/Document_Library/Press_Releases/2006/July/Statement_from_USTR_Spokesman_Regarding_China_Labor_Petition.html.

86. See *supra* Part II.A.1.

responsibility of the federal government.⁸⁷ Monetary policy significantly impacts economic growth and employment, yet states have no formal role in creating or implementing monetary policy. Thus, states once again are left to deal with the economic effects of federal policies when implementing their welfare reform programs.

Monetary policy is conducted through the Federal Reserve System (System).⁸⁸ Congress created the System in 1913 as the nation's central bank.⁸⁹ The System consists of a seven-member Board of Governors, twelve regional Federal Reserve Banks, the Federal Open Markets Committee (FOMC), the Federal Advisory Council, and "member banks"—privately owned, commercial banks.⁹⁰ The System's fundamental charge is to use monetary policy as a means to serve three macroeconomic ends: to maximize employment, to maintain stable prices, and to moderate long-term interest rates.⁹¹

In order to achieve these ends, the System primarily relies upon three monetary policy instruments.⁹² First, and most importantly, it conducts open-market operations, in which the FOMC directs the purchase and sale of federal government securities by the New York Federal Reserve Bank.⁹³ Second, it regulates member bank borrowing from the regional Federal

87. States are prohibited from engaging in policies designed to manipulate U.S. currency by, among other things, Art. I, § 10, cl. 1 of the U.S. Constitution, which states that "[n]o State shall . . . coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts" Federal primacy in the areas of monetary and fiscal policies and the national economy is underscored by the importance of federal policy in reaction to current economic conditions. As this article goes to print, the Federal Reserve, Congress, and President Bush are negotiating an economic package—including both monetary and fiscal responses—to stimulate a weakening national economy. Edmund L. Andrews & David M. Herszenhorn, *Fed's Chairman is Said to Back Aid to Economy*, N.Y. TIMES, Jan. 17, 2008, at A1 & A22.

88. *Reuss v. Balles*, 584 F.2d 461, 462–63 (D.C. Cir. 1978). For an overview of the Federal Reserve System, see Federal Reserve Bank of San Francisco: The Federal Reserve System in Brief, <http://www.frbsf.org/publications/federalreserve/fedinbrief/index.html> (last visited Nov. 12, 2007).

89. For an excellent abridged history of the Federal Reserve System, see *Reuss v. Balles*, 584 F.2d 461, 462–65 (D.C. Cir. 1978) (holding that a member of Congress and bondholder lacked standing to sue over the allegedly unconstitutional composition of the FOMC).

90. See generally 12 U.S.C. §§ 221–522 (creating and defining the powers, limits, and scope of the Federal Reserve System).

91. 12 U.S.C. § 225a ("The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates.").

92. *Committee for Monetary Reform v. Bd. of Governors of the Fed. Reserve Sys.*, 766 F.2d 538, 539 (D.C. Cir. 1985); *Riegle v. Fed. Open Market Comm.*, 656 F.2d 873, 875 (D.C. Cir. 1981); *Reuss v. Balles*, 584 F.2d 461, 462–63 (D.C. Cir. 1978).

93. 12 U.S.C. §§ 353–359. Section 263(b) requires regional Federal Reserve Banks to comply with the open-market instructions of the FOMC.

Reserve Banks.⁹⁴ Third, it establishes member bank reserve requirements—the amount of cash a bank must have on deposit at the Federal Reserve as a percentage of that bank's total loans.⁹⁵

While the System may use these three instruments in any combination to achieve its macroeconomic goals, the open-market operation is the most important.⁹⁶ In an open-market operation, the FOMC directs the purchase or sale of bonds in order to manipulate the money supply.⁹⁷ Thus, the FOMC may direct the purchase of bonds in order to increase the money supply (because the Federal Reserve pays for the bonds with money, putting additional money into circulation), or it may direct the sale of bonds in order to decrease the money supply (because the Federal Reserve sells bonds for money, reducing the amount of money in circulation).⁹⁸

The Federal Reserve's purchase or sale of bonds through an open-market operation impacts short-term interest rates, investment, economic growth, and employment.⁹⁹ Under a monetary expansion—when the FOMC directs the purchase of bonds—interest rates decline, investment increases (because the cost of borrowing to fund investment drops), and output increases, promoting macroeconomic growth.¹⁰⁰ The FOMC may use an expansionary monetary policy, for example, to move toward its goal of maximizing employment when there is little risk that lower interest rates will lead to inflation. Conversely, during a monetary contraction—when the FOMC directs the sale of bonds—interest rates rise, investment drops (because the cost of borrowing for investment rises), and output falls, constraining macroeconomic growth and inflation.¹⁰¹ The FOMC may use a relatively tight monetary policy, for example, to move toward its goal of stabilizing prices and reducing inflation. But, depending on other conditions, a tight monetary policy may result in lower levels of employment.¹⁰²

94. 12 U.S.C. § 347.

95. 12 U.S.C. § 461.

96. It is also the *exclusive* responsibility of the FOMC. *Riegle v. Fed. Open Mkts. Comm.*, 656 F.2d 873, 875 (D.C. Cir. 1981).

97. RUDIGER DORNBUSCH, STANLEY FISCHER & RICHARD STARTZ, *MACROECONOMICS* 270 (9th ed. 2004). See U.S. Monetary Policy: An Introduction, <http://www.frbsf.org/publications/federalreserve/monetary/MonetaryPolicy.pdf> (last visited Nov. 19, 2007) (providing a general overview of monetary policy); Cheryl Edwards, *Open Market Operations in the 1990s*, FEDERAL RESERVE BULLETIN (Nov. 1997), available at <http://www.federalreserve.gov/pubs/bulletin/1997/199711lead.pdf> (providing a more detailed description of the open market operation).

98. DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at 270.

99. See *id.* at Chs. 11, 12, & 16 (providing a background on fiscal policy and open-market operations and their effects).

100. *Id.*

101. *Id.*

102. See *id.* at 288–95 (listing examples of monetary policies in particular historical contexts).

State economic conditions and labor markets are thus clearly impacted by federal monetary policy, even considering monetary policy only in a domestic vacuum. Adding international linkages to the story only underscores the relative unimportance of the states' economic policies in the global economic order.

Any monetary policy shift by the Federal Reserve impacts—and is impacted by—international economic factors. Thus, when the FOMC conducts an open-market operation to manipulate short-term interest rates, it also affects the exchange rate of the dollar in relation to foreign currencies.¹⁰³ An expansionary monetary policy should lower interest rates and simultaneously depreciate the exchange rate.¹⁰⁴ A depreciated exchange rate means that domestic competitiveness increases in world markets in the short run (because domestic goods become cheaper in relation to foreign goods), and domestic output and employment increase to meet the new demand for exports.¹⁰⁵ A tight monetary policy acts exactly the opposite.¹⁰⁶

Other Federal Reserve actions—and actions by other countries' central banks—similarly impact the U.S. economy. For example, the Federal Reserve may conduct foreign currency operations—buying and selling foreign currency in order to manipulate the dollar's value in relationship to other currencies.¹⁰⁷ The dollar's value in relation to other currencies, in turn, impacts domestic competitiveness and thus affects exports and imports, impacting domestic output, growth, and employment.¹⁰⁸

Other central banks may also manipulate their currencies, similarly affecting exports and imports. In the last couple years, China provides an extreme example of manipulating currency in order to increase its global competitiveness. China's policy of artificially pegging its currency at below-market value means that goods produced in China are cheaper relative to goods produced in countries with a "floating" currency—one that is responsive to foreign exchange markets.¹⁰⁹ As a result, China artificially

All else being equal, a higher interest rate resulting from tighter monetary policy will reduce aggregate income and investment spending, thus likely reducing employment. *Id.* at Ch. 11.

103. DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at 446–47; CAVES, FRANKEL, & JONES, *supra* note 75, at 576–78.

104. CAVES, FRANKEL & JONES, *supra* note 75, at 577.

105. *See id.*

106. *See id.*

107. DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at 418.

108. *See id.* (noting, however, that “the Fed frequently pairs foreign exchange purchases with offsetting open market operations”); U.S. Foreign Exchange Intervention, <http://www.newyorkfed.org/aboutthefed/fedpoint/fed44.html> (last visited Nov. 19, 2007) (providing an overview of U.S. foreign exchange intervention).

109. *See* Economic Policy Institute, *Economic Snapshots: China's Currency Manipulation and U.S. Trade*, http://www.epinet.org/content.cfm/webfeatures_snapshots_archive_10302003se (last visited Nov. 12, 2007) (providing an overview of the economic effects of China's currency

increased its competitiveness with trading partners and thus increased its exports.¹¹⁰ For the United States, this translates into a dramatic trade deficit with China, lost investment to China, and resulting impacts on domestic output, growth, and employment.¹¹¹

Because of these international linkages, the Federal Reserve considers information and analysis related to both domestic and international economic factors, from both domestic and international sources. In short, the Federal Reserve coordinates its monetary policy with other countries' central banks,¹¹² removing U.S. states yet further from the policies that directly impact their economies. For example, the Bank for International Settlements in Basel, Switzerland, provides an important forum for the Federal Reserve to meet and coordinate its monetary policy with that of other central banks.¹¹³ Similar coordination occurs through the International Monetary Fund,¹¹⁴ the Organization for Economic Cooperation and Development,¹¹⁵ and even regional and other specialized forums such as the Asia Pacific Economic Cooperation Finance Ministers' Process,¹¹⁶ the G-8,¹¹⁷ the G-20,¹¹⁸ and the Governors of Central Banks of the American Continent.¹¹⁹ Individual U.S. states are not formal participants in these forums.

Thus, federal monetary policy has obvious and dramatic effects on domestic economic growth and employment in the states. These effects are amplified when the monetary policies of other countries and the fallout in

manipulation).

110. *Id.*

111. *Id.*

112. See DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at Ch. 12 (describing the linkages between countries' monetary policies).

113. See Bank for Int'l Settlements, <http://www.bis.org/about/index.htm> (providing information on the Bank for International Settlements); Federal Reserve Bank of New York, Bank for Int'l Settlements, <http://www.newyorkfed.org/aboutthefed/fedpoint/fed22.html> (last visited Nov. 12, 2007) (providing information on U.S. participation in the BIS).

114. See Int'l Monetary Fund, <http://www.imf.org> (last visited Nov. 12, 2007) (providing information on the International Monetary Fund and international economic cooperation).

115. See Organization of Economic Cooperation & Development, <http://www.oecd.org> (last visited Nov. 12, 2007) (providing information on the Organization of Economic Cooperation and Development and international economic cooperation).

116. See Asia-Pacific Economic Cooperation, <http://www.apecsec.org.sg> (last visited Nov. 12, 2007) (providing information on the Asia Pacific Economic Cooperation organization and international economic cooperation).

117. See G8 Information Centre, <http://www.g7.utoronto.ca/> (last visited Nov. 12, 2007) (discussing the G-8 and international economic cooperation).

118. See G-20, <http://www.g20.org/> (last visited Nov. 12, 2007) (discussing the G-20 and international economic cooperation).

119. See Press Release, XLIV Meeting of Central Bank Governors of the American Continent, <http://www.cemla.org/actividades/2007-05-governors.htm> (last visited Nov. 12, 2007).

the United States are taken into account. States, of course, have no formal control over monetary policy, and they certainly have little or no role in the international forums designed to coordinate countries' monetary policies in the international economy. Therefore, states, once again, are forced to deal with the economic effects of federal and international policies when implementing their welfare programs without any meaningful input into those policies.

2. Fiscal Policy

Like monetary policy, federal fiscal policy—the policy of the government with regard to government spending (both purchases and transfers) and taxing—is the exclusive province of the federal government. Like monetary policy, fiscal policy has obvious and dramatic effects on domestic growth and employment. And fiscal policy has seen stunning changes in the last fifteen years or so.¹²⁰ States, of course, conduct their own fiscal policies with some state-level economic impact, but any state's individual effect upon the overall U.S. economic picture pales in comparison to the effects of federal fiscal policy.¹²¹ At the end of the day, the states' fiscal policies are far less influential in shaping the U.S. economy and labor markets than federal fiscal policy.

In general, expansionary fiscal policy—a net increase in spending by the government—tends to raise output, growth, and thus employment,¹²² but it also tends to raise interest rates.¹²³ Absent accommodating monetary policy, any rise in interest rates associated with expansionary fiscal policy will dampen investment, partially or fully offsetting the original gains in output or growth.¹²⁴ Tight fiscal policy tends to work exactly the opposite.¹²⁵

As with monetary policy, though, the story becomes more complex when international effects and linkages are considered.¹²⁶ For example, by

120. Between 1990 and 2006, the federal budget increased from \$1,253,130 million (21.8% of GDP) to \$2,655,435 million (20.3% of GDP). Budget of the United States Government, Fiscal Year 2005, Table 1.2 23–24, available at <http://www.gpoaccess.gov/usbudget/fy05/browse.html>. The deficit moved from \$221,036 million in 1990 to a surplus of \$236,241 million in 2000 and back to a deficit of \$248,181 million in 2006. Budget of the United States Government, Fiscal Year 2008, Table 1.1 21–22, available at <http://www.gpoaccess.gov/usbudget/fy08/browse.html>.

121. The largest state, California, had a revised budget of \$102,136.6 million in 2006–2007; the governor proposed a budget of \$103,140.6 million for 2007–2008. Governor's Budget Summary, 2007–2008, available at <http://www.ebudget.ca.gov/pdf/BudgetSummary/FullBudgetSummary.pdf>.

122. DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at 261.

123. *Id.*

124. *Id.* at 268–95. Increased government spending can even “crowd out” private investment because of the resulting increased interest rates, thus resulting in *lower* growth. *Id.* at 280–83.

125. *Id.*

126. *See id.* at 268–95 (providing a background on monetary policy and its effects on

manipulating the simple national accounts equation, it becomes clear that the excess of investment over private savings and fiscal surplus must equal the trade deficit.¹²⁷ Thus, if investment and private savings remain constant, expansionary fiscal policy (or a decreased fiscal surplus) will yield an increased trade deficit. In other words, if investment and private savings remain constant, the fiscal deficit and the trade deficit move in the same direction.

In the 1990s, however, these deficits moved in opposite directions.¹²⁸ That is, the fiscal deficit decreased and even turned into a surplus in the late 1990s, while the trade deficit declined over the decade.¹²⁹ This inverse relationship resulted from a simultaneous surge in investment (as a result of high growth expectations in the 1990s) and a decline in private savings (that was simply a continuation of a trend that started as early as the mid-1950s).¹³⁰ Post-2000, the deficits moved in the same direction for a period and most recently seem to have moved in opposite directions again.¹³¹ States have little control over these inputs, the resulting deficits, or their economic impacts.

And there is growing concern that the impacts could be significant—that recent high fiscal deficits and current account deficits could trigger a “hard landing” for the U.S. economy.¹³² The classic scenario goes like this: (1) lenders lose confidence in the U.S. dollar based on high fiscal and trade deficits; (2) the dollar falls and interest rates rise; and (3) interest rate increases curb investment and consumption, precipitating a recession.¹³³ The net result is that states could be strapped with dealing with the economic impact of the fiscal and trade deficits through a devolved welfare program, even as they have little or no influence over the macroeconomic factors that influence the fiscal and trade deficits.

Fiscal balances influence the economy in other ways too. For example, except in the case of extreme deficits or other confidence shocks, changes in the fiscal balance will move the relative value of the dollar in the opposite direction. Thus, within a normal range, a rise in the fiscal balance (from, say,

international trade and the U.S. economy); WILLIAM R. CLINE, *THE UNITED STATES AS A DEBTOR NATION*, 99–152 (2005).

127. CLINE, *supra* note 126, at 101; CAVES, FRANKEL & JONES, *supra* note 75, at 310.

128. CLINE, *supra* note 126, at 101–02.

129. *Id.*

130. Congressional Budget Office, *Causes and Consequences of the Trade Deficit: An Overview*, 6–13 (Mar. 2000), available at <http://www.cbo.gov/ftpdocs/18xx/doc1897/tradedef.pdf>.

131. CLINE, *supra* note 126, at 102.

132. *Id.* at 174–75.

133. *Id.* at 175. Key questions remain and challenge the classic scenario, not least of which is whether a depreciated dollar would spur exports, thus increasing domestic output, enough to offset the effects of lost investment and consumption. *Id.* at 177.

a slight deficit to a surplus) should spark a drop in interest rates and a concomitant drop in the exchange rate.¹³⁴ In contrast, a drop in the fiscal balance (from, say, a balance or slight surplus to a slight deficit) should ordinarily spark a rise in interest rates and a concomitant rise in the exchange rate.¹³⁵ The dollar's value, in turn, affects competitiveness of U.S. exports, which thus affects domestic employment.¹³⁶ Again, states have little control over any of these variables or effects.

Given bleak fiscal predictions, states' tasks under welfare reform are particularly daunting. As a percentage of GDP, fiscal balances have swung dramatically in the last fifteen years: the fiscal balance reached near -5% of GDP in 1992 (for a fiscal deficit about 5% of GDP); it rebounded to just over +2% of GDP in 2000 (for a fiscal surplus just over 2% of GDP); and it fell again to around -4% of GDP in 2003 and 2004.¹³⁷ Based on the Congressional Budget Office (CBO) analysis and other studies, the United States is likely to see fiscal deficits hovering between 3% and 3.5% of GDP until approximately 2012 or beyond.¹³⁸ Longer-term, the fiscal picture looks potentially much worse¹³⁹—the CBO estimates under modest spending and tax revenue assumptions that the fiscal deficit could be 6.1% of GDP in 2030 and 14.4% of GDP in 2050, primarily as a result of dramatic increases in Medicare and Medicaid spending as the baby-boom population ages.¹⁴⁰

States have comparatively little control over any of the variables in the simple national accounts equation linking fiscal deficits with trade deficits. Investment depends largely on interest rates and national growth expectations; private savings depends on income; and government spending means *federal* government spending.¹⁴¹ Even to the extent that states may influence these variables, they historically have not done so. For example, state and local government savings changed comparatively little throughout the 1990s, thus not contributing one way or another to the national decline in savings.¹⁴² Since 2000, state and local debt (in the form of long-term municipal bonds) has skyrocketed to \$1.85 trillion, suggesting that state and local spending may have greater relative impact on state economic

134. *Id.* at 109.

135. *Id.*

136. DORNBUSCH, FISCHER & STARTZ, *supra* note 97, at 306–07.

137. CLINE, *supra* note 126, at 102 fig. 4.1.

138. *Id.* at 123–24.

139. *Id.* at 125.

140. *Id.*

141. CAVES, FRANKEL & JONES, *supra* note 75, at 310.

142. Federal Reserve Board, Flow of Funds Accounts of the United States, tbl. D.3 (June 2006) (showing state and local debt remaining relatively stable through the 1990s).

opportunities.¹⁴³ But at least some of this debt reflects a growing trend among states to securitize anticipated federal grants;¹⁴⁴ to the extent that state and local debt reflects future federal aid this trend only again reflects the federal government's primacy. Thus, despite the increase in state and local government debt burdens over the last seven years, federal fiscal policy nevertheless plays a relatively much more important—even if not absolutely dominant—role in shaping the U.S. labor market. Like federal monetary policy, then, federal fiscal policy leaves states largely with an economic situation not of their own creation.

III. LABOR MARKET TENSIONS

Aside from the control that the federal government asserts over domestic labor markets, the reality of the evolving domestic labor market with increased globalization creates a second critical tension: current labor market trends and projected domestic job growth moving jobs away from the relatively well-paid and stable manufacturing sector and toward the two opposite ends of the service sector.¹⁴⁵ Job growth is both in high-education and high-income service-sector occupations and in low-education and low-income service-sector occupations.¹⁴⁶ These latter jobs often lack the kind of health benefits, child care benefits, retirement benefits, and stability that mark a good job that might permit a welfare recipient to move permanently off welfare and into the workforce.¹⁴⁷ With strict workforce participation rates and restrictive rules on the use of education and training as part of

143. *Id.*

144. Chris Edwards, *State and Local Government Debt is Soaring*, 37 CATO INST. TAX & BUDGET BULL. (2006), available at http://www.cato.org/pubs/tbb/tbb_0706-37.pdf.

145. See *infra* notes 147, 154–55, 164–65, and accompanying text; see also WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996) (providing an excellent overview of this trend and its impact on inner-city communities).

146. See *infra* notes 147, 154–55, 164–65, and accompanying text. See also Board of Governors of the Federal Reserve System, *Monetary Policy Report to the Congress*, July 18, 2007, at 2 (“Job growth in the first half of 2007 was driven by sizable increases in service-producing industries. In the goods-producing sector, manufacturing employment contracted, especially at firms closely tied to the construction industry and at producers of motor vehicles and parts.”).

147. Demetra Smith Nightingale, *Work Opportunities for People Leaving Welfare*, in *WELFARE REFORM: THE NEXT ACT* 105–07 (Alan Weil & Kenneth Finegold eds., 2002); Julie Strawn, Mark Greenberg, & Steve Savner, *Improving Employment Outcomes under TANF*, in *THE NEW WORLD OF WELFARE* 226 (Rebecca M. Blank & Ron Haskins eds., 2001). See WILSON, *supra* note 145, at 225 (“Despite some claims that low-skilled workers fail to take advantage of labor-market opportunities, available evidence strongly suggests not only that the jobs for such workers carry lower real wages and fewer benefits than did comparable jobs in the early 1970s, but that it is harder for certain low-skilled workers . . . to find employment today.”). For more personal accounts of the challenges faced by workers, see DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* 39–76 (2004); BARBARA EHRENREICH, *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* (2001).

workforce participation requirements, states are caught between a federal mandate to move welfare recipients to work and the reality of a job market in a global economy that is supplying states only with more unsustainable jobs. This, then, is the labor market tension between welfare reform and globalization.

Globalization has changed the domestic labor market in important ways. The general trend is familiar: the U.S. labor market as a whole is moving from a manufacturing base to a service-sector base as globalization increases.¹⁴⁸ Service-sector growth occurs at opposite ends of the educational and earnings ranges: growth in service sector employment occurs in high-educational, high-wage jobs and in low-educational, low-wage jobs.¹⁴⁹ At the same time, relatively low-education, manufacturing jobs, especially unionized jobs, have traditionally come with higher pay, better benefits, and more job protection than service-sector jobs.¹⁵⁰ With a relative move from a manufacturing base to a service-sector base, and keeping educational attainment steady, the jobs available to most welfare recipients—when any jobs are available—increasingly come with lower pay, fewer benefits, and greater instability.¹⁵¹ These are not the kind of economically viable and sustainable jobs that can support recipients over the long term moving from welfare to work.

Between 1996 and 2006, the ten-year period of welfare reform, total employment in the United States grew from 126,708,000 to 144,427,000—a total increase of about 14% and an average annual increase of about 1.4%.¹⁵² Aggregate employment growth rates across all sectors varied over that period, but total employment only declined between 2001 and 2002.¹⁵³

148. See *infra* notes 154–56 and accompanying text.

149. See *infra* notes 154–55, 164–65, and accompanying text.

150. See *supra* note 147.

151. See *id.*

152. U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, 1996–2006, Employment Level (Not Seasonally Adjusted) and author's calculations based upon those data. All U.S. Department of Labor data available at the U.S. Department of Labor, Bureau of Labor Statistics homepage, <http://www.bls.gov/>.

Seasonally adjusted gross job gains over that period varied dramatically. The economy produced 7,679,000 jobs in the first quarter of 1996 and 7,509,000 jobs in the first quarter of 2007, the last quarter for which data were available as of this writing. Over the eleven-year period, job growth hit a high of 8,792,000 jobs in the first quarter of 2000 and a low of 7,396,000 jobs in the third quarter of 2003. Seasonally adjusted gross job losses over the same period similarly varied dramatically. Thus, the economy lost 7,476,000 jobs in the first quarter of 1996 and 7,071,000 jobs in the first quarter of 2007. Job loss hit a high of 8,801,000 in the second quarter of 2001 and a low of 6,905,000 in the first quarter of 2006. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, First Quarter 2007 21, available at <http://www.bls.gov/news.release/pdf/cewbd.pdf> (last visited Jan. 14, 2007).

153. U.S. Department of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, 1996–2006, Employment Level (Not Seasonally Adjusted), available at

Growth areas over the ten-year period were concentrated in higher-wage management, professional, health-care, and financial occupations,¹⁵⁴ on the one hand, and lower-wage service-sector and construction occupations, on the other.¹⁵⁵ In contrast, employment in production occupations rose from 1996 to 2000, then fell dramatically between 2000 and 2006.¹⁵⁶ Over the entire ten-year period, the economy lost 1,120,000 production jobs, representing an 11% drop over the period.¹⁵⁷ Although employment in other occupations grew and declined at various points between 1996 and 2006, only two other occupational groupings lost total jobs between 1996 and 2006: (1) farming, fishing, and forestry;¹⁵⁸ and (2) production, transportation, and material moving.¹⁵⁹ The New Labor Forum reported in 2006 that the United States has lost over 3.4 million manufacturing jobs since 1998, including about 2.9 million since 2001.¹⁶⁰ More than one-half of those losses have been from union shops.¹⁶¹

<http://www.bls.gov/data/home.htm> (last visited Jan. 14, 2008).

154. The employment level of management, professional, and related occupations increased steadily over the ten-year period, out-performing the averages across all occupations, from an annual employment level of 41,417,000 in 1996 to 50,420,000 in 2006—a total increase of 21% and an average annual increase of about 2.1%. Similarly, the employment level of management, business, and financial operations increased steadily from an employment level of 17,691,000 in 1996 to 21,233,000 in 2006—a total increase of 20% and an average annual increase of about 2.0%. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, 1996–2006, available at <http://data.bls.gov/cgi-bin/dsrv?bd> (author's custom charts and calculations).

155. Employment in service occupations increased steadily and out-performed the average total increases, from an annual employment level of 19,578,000 in 1996 to 23,811,000 in 2006—a total increase of nearly 22% and an average annual increase of nearly 2.2%. Employment in sales and office occupations increased from 34,234,000 in 1996 to 36,141,000, a total increase of 5.6%; and sales and related occupations increased from 14,841,000 in 1996 to 16,641,000 in 2006, a total increase of 12%. Employment in construction and extract occupations grew from 7,225,000 in 1996 to 9,507,000 in 2006—a total increase of nearly 32%. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, 1996–2006, available at <http://data.bls.gov/cgi-bin/dsrv?bd> (author's custom charts and calculations).

156. Employment in production occupations started at 10,498,000 in 1996, grew to 11,463,000 in 2000, and then quickly and steadily declined to 9,378,000 in 2006. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, 1996–2006 available at <http://data.bls.gov/cgi-bin/dsrv?bd> (author's custom charts and calculations).

157. Author's calculation based on U.S. Department of Labor data.

158. Employment in farming, fishing, and forestry dropped from 1,117,000 in 1996 to 961,000 in 2006. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, 1996–2006, available at <http://data.bls.gov/cgi-bin/dsrv?bd> (author's custom charts and calculations).

159. Employment in production, transportation, and material moving occupations fell from 18,940,000 in 1996 to 18,224,000 in 2006. U.S. Department of Labor, Bureau of Labor Statistics, Business Employment Dynamics, 1996–2006, available at <http://data.bls.gov/cgi-bin/dsrv?bd> (author's custom charts and calculations).

160. Bob Baugh & Joel Yudken, *Manufacturing Discontent: Is Deindustrialization Inevitable?*, 15 NEW LABOR FORUM 55, 56–57 (Summer 2006).

161. *Id.* at 56.

Projections for growth in the job market are consistent with these recent historical trends. The Department of Labor projects total employment to grow by 18.9 million jobs, or 13%, between 2004 and 2014.¹⁶² Employment growth will be concentrated in the service sector, with educational services, health care and social assistance, and professional and business services seeing the strongest growth.¹⁶³ The Department projects that these sectors will grow at more than twice the pace of the overall economy over this ten-year period.¹⁶⁴ Construction jobs, too, will grow, but at a somewhat slower pace.¹⁶⁵ Manufacturing employment, in contrast, is projected to decline 5% over that period.¹⁶⁶

The relative decline in the domestic manufacturing sector is also reflected in domestic manufacturing investment. Domestic manufacturing investment dropped nearly 17% in real terms between 1998 and 2004, and investment in manufacturing structures declined 44% over the same period.¹⁶⁷ New, potentially offsetting foreign investment mostly represents a change in ownership of existing capacity, not new jobs or new production facilities.¹⁶⁸ At the same time, U.S. manufacturers were increasing their investments overseas. Between 1990 and 2005, U.S. direct investment abroad on a historical-cost basis¹⁶⁹ increased from \$430,521 million to \$2,069,983 million—an increase of 381% over the fifteen-year period.¹⁷⁰ Between 1995 and 2005, U.S. direct investment abroad on a historical-cost basis increased from \$699,015 million to \$2,069,983 million—an increase of

162. Bureau of Labor Statistics, 2001–2014 Employment Projections, *available at* <http://www.bls.gov/news.release/ecopro.nr0.htm>.

163. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections, <http://www.bls.gov/emp>. Of special note, the Department projects a 21.2% increase in professional and related occupations (from 28,544,000 in 2004 to 34,590,200 in 2014), including at least 20% growth in computer and mathematical science occupations; community and social service occupations; education, training, and library occupations; and healthcare practitioners and technical occupations. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections, <http://www.bls.gov/emp>.

164. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections. <http://www.bls.gov/emp>.

165. The Department projects that construction jobs will grow from 6,974,500 in 2004 to 7,756,900 in 2014—a 12% total growth rate. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections, <http://www.bls.gov/emp>.

166. Bureau of Labor Statistics, *supra* note 162.

167. Baugh & Yudken, *supra* note 160, at 57.

168. *Id.* See *infra* notes 169–71 for data on foreign direct investment in the United States.

169. The U.S. Department of Commerce records data on a historical-cost basis and without current cost adjustment. See <http://bea.gov/International/Index.htm> (last visited Jan. 14, 2008).

170. Author's calculation, based on U.S. Department of Commerce data, at <http://bea.gov/International/Index.htm> (last visited Jan. 14, 2005).

196% over the ten-year period.¹⁷¹ Many argue that increased U.S. foreign direct investment shifts U.S. manufacturing jobs overseas to cheaper labor markets—that increased U.S. foreign direct investment proximately causes a loss of manufacturing jobs in the United States.¹⁷² Others argue that increased U.S. foreign direct investment goes mainly to high income, developed countries and simply reflects the larger trend away from manufacturing and toward the service sector in the U.S. economy—that foreign direct investment simply follows larger trends in the U.S. economy.¹⁷³ Still others adopt a middle position that U.S. foreign direct investment (in the form of foreign outsourcing) may result in shifts in the composition of domestic output and the domestic labor market but probably does not result in aggregate changes of output or employment.¹⁷⁴ Whatever the precise relationship between foreign direct investment trends and the pattern in the broader domestic economy moving away from manufacturing and toward the service sector, foreign direct investment trends underscore the basic economy story that the U.S. domestic economy is moving relatively away from manufacturing and toward the service sector.

With employment growth in the service sector, the jobs that are and will be available are of two types: (1) service-sector jobs with high educational requirements and higher wages; and (2) service-sector jobs with low educational requirements and lower wages.¹⁷⁵ Even a cursory examination of the Department of Labor's anticipated growth occupations illustrates this. The Department on the one hand projects high growth in business and financial operations and in professional and related occupations, including such high education and technical occupations as computers and mathematics, legal occupations, and education.¹⁷⁶ These jobs require higher

171. *Id.*

172. *See generally* Linda Levine, OFFSHORING (A.K.A. OFFSHORE OUTSOURCING) AND JOB INSECURITY AMONG U.S. WORKERS, CONG. RES. SERV. REP. FOR CONG. ORD. CODE RS21118 (June 18, 2004) (describing the concern that offshoring caused a jobless recovery and is responsible for the loss of U.S. jobs).

173. *See* James K. Jackson, U.S. DIRECT INVESTMENT ABROAD: TRENDS AND CURRENT ISSUES, CONG. RES. SERV. REP. FOR CONG. ORD. CODE RS 21118 (Apr. 26, 2006) (arguing that U.S. foreign direct investments reflect, rather than cause, the broader trend from manufacturing to the service sector in the U.S. economy).

174. *See* Craig K. Elwell, FOREIGN OUTSOURCING: ECONOMIC IMPLICATIONS AND POLICY RESPONSES, CONG. RES. SERV. REP. FOR CONG. (June 21, 2005) (arguing that U.S. foreign direct investment (as outsourcing) has both destructive and creative aspects within the domestic economy, but that it probably does not affect overall growth or employment rates).

175. *See infra* notes 176–79 and accompanying text.

176. U.S. Department of Labor, Bureau of Labor Statistics, BLS Releases 2004–14 Employment Projections Summary, <http://www.bls.gov/news.release/ecopro.nr0.htm> (last visited Nov. 12, 2007).

and specialized education but come, on average, with higher salaries.¹⁷⁷ On the other hand, the Department projects growth in general service occupations, including such occupations as healthcare support, food preparation and serving, building and grounds cleaning and maintenance, and personal care.¹⁷⁸ These jobs require lower levels of education and come, on average, with much lower salaries, and since 2000 they have seen much slower wage growth.¹⁷⁹ These latter service-sector jobs also often lack meaningful health and retirement benefits and are often part-time, seasonal, or otherwise unstable.¹⁸⁰ For similar educational requirements, these low-paying service-sector jobs are crowding out higher-paid manufacturing jobs.¹⁸¹

The net result is that low paying jobs with poor benefits and little long-term stability have replaced—and are likely to continue to replace—better paid manufacturing jobs for most welfare recipients, holding educational levels steady.¹⁸² With a median weekly paycheck of \$413 in 2005, even the median wage service-sector job pays an annual rate of a mere \$21,476 for a

177. Median weekly earnings for management, professional, and related occupations grew from \$810 in 2000 to \$937 in 2005—nearly a 16% increase over the period. U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey, Weekly and Hourly Earnings Data from the Current Population Survey. The Department projects that some of these occupations will also see the largest wage growth from 2004 to 2014. U.S. Department of Labor, Bureau of Labor Statistics, BLS Releases 2004–14 Employment Projections Summary, <http://www.bls.gov/news.release/ecopro.nr0.htm> (last visited Nov. 12, 2007).

178. U.S. Department of Labor, Bureau of Labor Statistics, BLS Releases 2004–14 Employment Projections Summary, <http://www.bls.gov/news.release/ecopro.nr0.htm> (last visited Nov. 12, 2007).

179. Median weekly earnings for service occupations grew from \$365 in 2000 to \$413 in 2005—a 13% increase over that period. U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey, Weekly and Hourly Earnings Data from the Current Population Survey. The Department projects that many of these occupations will see the largest wage growth from 2004 to 2014, although they start much lower than the management, professional, and related occupations. U.S. Department of Labor, Bureau of Labor Statistics, Employment Projections, <http://www.bls.gov/emp>.

180. See *supra* note 147.

181. Median weekly earnings for production occupations grew from \$471 in 2000 to \$538 in 2005. U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey, Weekly and Hourly Earnings Data from the Current Population Survey. Compare the same years for low education service sector jobs, *supra* note 179.

182. The experience bears this out. Between 1996 and 2000, the breakdown of employed former welfare recipients in the most common industries was as follows: nearly 18% of employed former welfare recipients worked in “retail except eating and drinking”; 14.4% worked in “eating and drinking places”; 7.4% worked in “manufacturing except printing”; 4.6% were in “personnel supply services”; 3.7% were in “hotels and lodging places”; and fewer than 3.6% were in each of “[l]abs home care,” “[n]ursing and personal care facilities,” “elementary and secondary schools,” and “child day care services.” The remaining 38.2% were in “other” industries. Heather Boushey & David Rosnick, *For Welfare Reform to Work, Jobs Must Be Available*, Center for Economic and Policy Research Issue Brief 3 (Apr. 1, 2004), available at http://www.cepr.net/publications/welfare_reform_2004_04.htm.

52-week year (i.e., with no time off),¹⁸³ just marginally higher than the poverty line for a family of four in 2005.¹⁸⁴ And it probably comes with poor benefits and little stability.¹⁸⁵ This is hardly the kind of job that can take a welfare recipient from welfare to work. With this kind of labor market, the unforgiving federal work requirements will inevitably fail to move recipients off welfare and into sustainable jobs.

IV. CONCLUSION

Because of the federalism and labor market tensions, welfare reform cannot achieve its economic goals as a devolved welfare-to-work program over the long term in a global economy. In a global economy, the federal government—not the states—controls the primary instruments of influence over the domestic labor market; states mostly take the labor market as they receive it from federal policies in a global economic order. And the global economic order seems to be creating domestic jobs for welfare recipients that are lower paid, less stable, and without the kinds of benefits necessary for long-term economic sustainability. The Deficit Reduction Act, with its stricter workforce participation rates and its tighter rules on the use of education and training as part of workforce participation, only exacerbates these tensions because it prevents states from adopting real and meaningful educational programs to move their welfare recipients into the higher wage growth occupations that require specialized and advanced training. Under the current law, these tensions will likely lead states simply and expediently to place welfare recipients in the growing lower-wage service sector occupations, making them permanent working poor and even rotating them back into a cycle of poverty.

In order to succeed in moving recipients off welfare permanently, a devolved welfare-to-work program must address these tensions. Most importantly, it must significantly loosen workforce participation requirements and the limits on the use of education and training as work.¹⁸⁶ If states are to place welfare recipients into long-term, economically sustainable jobs in the growing higher-income service-sector occupations that require higher and more specialized education, they must have the flexibility to train recipients to perform in these jobs. If the federal

183. Author's calculation, based on U.S. Department of Labor, Bureau of Labor Statistics, Current Population Survey, Weekly and Hourly Earnings Data from the Current Population Survey.

184. The federal poverty line for a family of four in 2005 was \$19,350. 70 Fed. Reg. 8374 (Feb. 18, 2005).

185. See *supra* note 147.

186. These are but two changes called for by the tensions between welfare reform's priority of work and the global economy. If welfare reform seriously seeks to promote economically sustainable work, it must, of course, also provide greater child care support and other forms of support recommended by participants in this Symposium.

government seeks to devolve a welfare-to-work program to the states, it can only succeed in a global economy by giving the states the full flexibility they need to place their welfare recipients in a labor market that they largely neither willed nor created.

Short of adopting more flexible workforce participation rate requirements and education credits for work, welfare reform can only resolve these tensions by becoming either a trade adjustment assistance-unemployment benefit program or a pure means-tested income support program operated jointly by the federal and state governments, even through something like a block grant. A trade adjustment assistance-unemployment entitlement program could provide cash benefits and worker training or retraining for individuals who demonstrate a layoff, lost job, or even an inability to find an economically sustainable job in a domestic labor market shaped by globalization. This approach would harmonize the program's priority of work with the political and economic realities of globalization. In other words, only this approach would resolve the federalism and labor market tensions by recognizing that global forces help shape the domestic labor market and that the labor market cannot always produce economically sustainable jobs with the mathematical precision required by welfare reform.