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FROM *GIBBONS* TO *LOPEZ*: DOES THE COMMERCE CLAUSE REMAIN A VIABLE TOOL FOR ELIMINATING THE VESTIGES OF SLAVERY?

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> [A]bsent a jurisdictional tie to interstate commerce or regulation of the channels or instrumentalities of such commerce, the focus of the Court's attention – as long as Lopez survives— will not be simply on whether the cumulative or aggregated effects on interstate commerce of an intrastate activity can be called substantial, but rather on whether there is a colorable claim that the intrastate activity itself is "commercial" or "economic."
>
> Laurence H. Tribe[1]

I. INTRODUCTION

The history of slavery and the resultant oppression of Black-Americans in the United States dates back to before the creation of this Nation. Nevertheless, from the earliest days to today, the continual persecution of Black-Americans in the United States has co-existed comfortably with the loftiest American goals of democracy, human freedom, and self-determination. The relationship between African slaves in America, and their descendants, has the long-standing history of not only civil, social, and political inequality, but also cultural and economic disparity.[2] The transition in America from a "period of legalized slavery to a period of freedom—deemed generally the 'Reconstruction' period—marked not only a shift in location of former slaves from inhuman to human beings, but also marked the related struggles of blacks in the United States to procure entitlement to the trappings of humanity in a liberal state—freedom, equality, and property ownership."[3] In addition to the lack of opportunity to progress economically during the slavery era, Black-Americans also lacked the occasion to advance educationally. Black-Americans were not permitted to learn to read, oftentimes by law, which resulted in a high illiteracy rate. Thus, Black-Americans went from legal slavery to institutionalized oppression, a condition that would be evidenced by the "normative realities of disparate locations with respect to property ownership specifically and economics generally"[4] that has been maintained through time, by the social and legal

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1. Laurence H.Tribe, *American Constitutional Law* 819 (3d ed., Found. Press 2000).
2. Berta Esperanza Hernandes-Truyol & Shelbi D. Day, *Property, Wealth, Inequality and Human Rights: A Formula for Reform*, 34 Ind. L. Rev. 1213 (2001).
3. *Id.* at 1216.
4. *Id.* at 1217.

regime. In addition to discriminatory housing practices, Black-Americans were placed in lower paying jobs with virtually no possibility for advancement. Schools were segregated, from elementary levels to professional levels.[5]

To be sure, not much has changed. "[T]imes have changed, statutes have been enacted, and equality has been proclaimed, but the reality is that the present is not simply reflective of, but disturbingly similar to the past.... The racism that plagues our history stubbornly persists." [6] The endurance of slavery from past to present, along with the present day condition of economic disparities between Blacks and Whites, has left Blacks at an extreme economic disadvantage. As history has played itself out, it has become evident that Blacks have always been on an unleveled playing field. The game was never fair because one group of players, although potentially initially identical in speed and agility, were assigned a handicap — a handicap that made the game an unjust competition because the handicapped team could never catch up.[7] This has been the past and present hallmark of the relationship between Blacks and Whites in America.

The Thirteenth and Fourteenth Amendments, of course, would be the logical constitutional supports for attacking discrimination against the descendants of former slaves and, in fact, are widely used for that purpose. However, Congress has placed limitations on the Fourteenth Amendment with the result that only state action is prohibited, not private action. Civil rights activists traditionally have made attempts to try to close the gap created as a result of private discriminatory behavior, largely by invoking Congress' power to regulate interstate commerce.

For some time now, civil rights activists and lawyers have been focusing on the need to bridge the gap in wealth between Black-Americans and White-Americans.[8] There is a long historical connection between slavery and the economy of the United States. And even though it was necessary in the early days of the civil rights movement, after the passage of the Thirteenth Amendment, to focus primarily on securing basic human rights for the descendants of former slaves, the fact remains that the descendants of former slaves continue to suffer one of the primary indignities of slavery – enforced poverty. The evidence is overwhelming through both anecdotal accounts and statistical data that Black-Americans are the victims of widespread, systemic discrimination that denies them access to the opportunity to pursue one aspect of the American dream of achieving economic security. To the extent that Black-Americans are trapped in poverty as a result of racial and social subordination that has its source in slavery in America, they continue to wear the "badges and incidents of slavery."[9] Just as the civil rights laws, to date, have been

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5. *Id.* at 1222.
6. *Id.* at 1223-24.
7. Hernandes-Truyol, *supra* n. 2, at 1224.
8. *See generally* Kevin Chappell, *Ebony, JESSE JACKSON'S Wall Street Initiative* <http://www.findarticles.com/cf_dls/m1077/4_54/53630772/p1/article.jhtml> (Dec. 27, 2003) (concerning Jesse Jackson's Wall Street Project in New York and the LaSalle Street Project in Chicago).
9. *See In re Civil Rights Cases*, 109 U.S. 3, 20 (1883) (distinguishing between the system of peonage that was outlawed by the Thirteenth Amendment and the "mere discriminations on account of race or color," that were not.) (Harlan, J., dissenting); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).

necessary to provide Black-Americans with protections for basic human rights, new civil rights laws are needed to help to eliminate the remaining incidents of slavery. Black-Americans are in desperate need of legal protection in virtually every area of their economic lives.

Certainly it was appropriate to begin the civil rights movement by securing basic human rights to live, to public accommodations, to public education, to vote, to decent housing. The time has come, however, to return to the task of assuring full participation in American life to the descendants of former slaves — which was and is the goal of the Thirteenth Amendment as interpreted by the Supreme Court and Congress through its passage of all civil rights legislation to date. That goal has not and will not be achieved until or unless the seemingly intractable economic plight of Black-Americans is given significant legislative attention. America's famously informal approach to creating commercial relationships based on personal relationships is inherently problematic and exclusionary. The focus of this article, however, is limited to the economic impacts of slavery.

Historically, American slavery was a system of peonage that, of course, by its very nature, relied upon the imposition of economic oppression. The main benefit realized by the slave owner as a result of the forcible imposition of involuntary unpaid labor was *economic*. All of the other benefits realized by the slave owner as the result of slave ownership were largely the result of the privileges that they enjoyed because of their wealth and status — incidents of the economic benefits of profits enlarged by the nicety that the slave owner had no labor costs. Without free slave labor, even the wealthiest slave owner would have been relatively less wealthy.[10] Today, Black-Americans continue to experience systematic economic oppression as a result of their status as the descendants of former slaves. As will be shown in Section VI, the evidence is voluminous and compelling.

II. BADGES AND INCIDENTS OF SLAVERY

Discussion of the 13th And 14th Amendments

i. The Thirteenth Amendment

Amendment XIII –Slavery Abolished; Enforcement

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

10. *See generally* Kevin Hopkins, *Forgive U.S. Our Debts? Righting the Wrongs of Slavery*, 89 Geo. L.J. 2531, 2551 (Aug. 2001).

> **Section 2.** Congress shall have power to enforce this article by appropriate legislation.
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> **Proposal and Ratification**
> This amendment was proposed to the legislatures of the several States by the Thirty-eighth Congress, on January 31, 1865, and was declared, in a proclamation of the Secretary of State, dated December 18, 1865...[11]

The first section of the Thirteenth Amendment banned the practice of slave ownership in the United States. The provision contained no state action provision; it was generally agreed that it was self-executing and prohibited slavery whether or not done by individuals with any connection to any governmental entity.[12] "From the beginning it was arguable that the abolition of slavery implied that the persons so freed would take on the status of free citizens – that the amendment should be read broadly as a response to the whole social system of racial subordination associated with slavery."[13]

"The second section of the Thirteenth Amendment was not self-executing; but empowered Congress to eliminate the legal disabilities that came to be known as the badges and/or the incidents of slavery."[14] Congress first attempted to grant civil remedies to former slaves immediately after the Civil War through several civil rights acts that sought to grant them equal rights to enter into contracts, to own property, and to use public accommodations.[15] However, these early efforts by Congress were generally unsuccessful as a result of the Court's interpretation of the Thirteenth Amendment as ending legal bondage only;[16] but neither private nor public acts of racial discrimination against freedmen.[17] And although the Fourteenth Amendment soon prohibited discriminatory behavior as a result of state action, it was not until 1968 in the case of *Jones v. Alfred H. Meyer*[18] that the Court recognized that Congress could regulate private acts of racial discrimination under the Thirteenth Amendment.[19] The *Jones* Court also held that the Thirteenth Amendment empowered Congress to eliminate slavery's "badges and incidents."[20]

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11. U.S. Const. amend. XIII.
12. John E. Nowak & Ronald D. Rotunda, *Constitutional Law* 688 (6th ed. West Wadsworth 2000); 6 Ency. of the Am. Const. (2nd ed. Gale Group 2000).
13. 6 Ency. of the Am. Const., at 2693 (2nd ed. Gale Group 2000).
14. Jethro D. Leiberman, *The Evolving Constitution, How the Supreme Court Has Ruled on Issues from Abortion to Zoning*, 69 Random House 1992 (Lieberman notes that "Although many slaves were branded, the so-called badges of slavery were not literally physical markings but the legal disabilities under which slaves suffered"); *see generally City of Memphis v. Green*, 451 U.S. 100 (1981); *Fisher v. Shamburg*, 624 F.2d 156 (1980); *Alma Society Inc. v. Mellon*, 601 F.2d 1225 (1979); *Robinson v. Town of Colonie*, 878 F.Supp. 387 (1995); *Jordan v. Greenwood*, 534 F.Supp. 1351 (1982); *Holton v. Crozer-Chester Medical Center*, 419 F.Supp. 334 (1976); and *Rhyne v. Childs*, 359 F.Supp. 1085 (1873).
15. Lieberman, *supra* n. 14, at 69.
16. *See generally Slaughter-House Cases*, 83 U.S. 36 (1873); *Hodges v. United States* 203 U.S. 1 (1906).
17. *See Plessy v. Ferguson*, 163 U.S. 537 (1896).
18. 392 U.S. 409 (1968).
19. *Id.* at 440
20. *Id.* at 438.

ii. The Fourteenth Amendment Amendment XIV – Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Represrentation;Disqualification of Officers; Public Debt; Enforcement

> **Section 1**. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall makeor enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protectionof the laws. [21]
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> **Section 2.** (omitted)
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> **Section 3.** (omitted)
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> **Section 4.** (omitted)
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> **Section 5.** (omitted)
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> **Proposal and Ratification**
> This amendment was proposed to the legislatures of the several States by the Thirty-ninth Congress, on June 13, 1866. On July 21, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that the legislatures of the State of ..., being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress:

In an early decision interpreting the equal protection clause of the Fourteenth Amendment, the Supreme Court invalidated a state law that contained racial exclusions of black jurors from juries.[22] The majority opinion examined the conditions which had led to the passage of the Fourteenth Amendment. The opinion described the Fourteenth Amendment as "one of a series of constitutional provisions having a common purpose; namely, securing to [Black-Americans] all the civil rights that the superior race may enjoy."[23] In the opinion of the majority, Blacks as a race were unprepared or unable to take an equal place in post Civil War society.[24] Thus

21. U.S. Const. amend. XIV.
22. *Strauder v. West Virginia*, 100 U.S. 303 (1879).
23. *Id.* at 306.
24. *Id.*

they were in need of federal "protection against unfriendly action in the States where they were resident. In view of these considerations the Fourteenth Amendment was framed and adopted."[25] The greatest limitation on the reach of the Fourteenth Amendment in the area of civil rights, of course, is its scope. The Amendment is expressly limited to protection against State, not private, action. In 1966, in *United States v. Guest*[26], the Supreme Court "seemed determined to uphold congressional legislation aimed at establishing racial equality... and six Justices agreed ... that Congress could reach even private conduct that interfered with the exercise of Fourteenth Amendment rights. The state action limitation, in other words, would not bar congressional enforcement of the equal protection clause of the Fourteenth Amendment's prohibition on private discrimination."[27] Two years later, in *Jones v. Alfred H. Meyer*, the Court interpreted the 1866 Civil Rights Act to prohibit racial discrimination in the sale of real property and anointed Congress with the power "rationally to determine what are the badges and incidents of slavery,"[28] and to pass laws to eliminate any "relic of slavery"[29] that it found.

III. ECONOMIC DISPARITY AS A RELIC OF SLAVERY

Today, Black-Americans, on the average, are more likely to be both uneducated and unemployed than White-Americans. From 1988 to 1997, Black men between the ages of 16-24 were twice as likely as their white counterparts to be both out of school and out of work. The number of Black women who were both out of school and out of work was 27.4% in comparison to White women, who represented only 13%.[30]

Although the relationship of education to increased earning capacity for Blacks has increased since the Civil Rights movement, inequalities still exist. College enrollment and increased earning capacity for comparable White-Americans has remained consistent, if not increased. The same cannot be said for their Black counterparts. The inconsistency and inequality of college enrollment for Black-Americans from 1967 to the present has been astonishing. The rates for Black-Americans have steadily declined, while the rates for White-Americans increased.[31] Education sets the stage for the likelihood of an increased earning capacity. Although this is true, inequalities still exist comparably from Black to White. In 1998, Black men earned 71 cents for every dollar earned by White men. Black male college graduates earned 72 cents for every dollar earned by comparable

25. *Id.*
26. 383 U.S. 745 (1966).
27. 6 Ency. of the Am. Const., 2694.
28. *Jones*, 392 U.S. at 440.
29. *Id.* at 443.
30. The Council of Economic Advisers for the President's Initiative on Race, *Changing America: Indicators of Social and Economic Well-Being by Race* (September 1998).
31. *Joint Center: Data Bank, College Enrollment* <http://www.jointcenter.org/DB/factsheet/ college.htm> (accessed Dec 29, 2003) (citing National Center for Educational Statistics, *Enrollment Patterns of First-Time Beginning Postsecondary Students, The Conditions of Education 1998, Indicator 10* <http://www.nces.ed.gov/pubs98/conditions98/c9810a01.html> (1998)).

Whites. Black women's annual earnings are 91 percent of that of White women.[32] On the average, Blacks earned less annually, at all educational levels, than comparably educated Whites.[33]

The impact of slavery is still a chronic presence in the lives of all Black Americans. Even the most affluent of black men face the every day indignities of being refused entry into stores, of being ignored by taxi drivers, of being accused of intimidating white women in high rise elevators, of being victims of "driving while black," and other forms of routine police brutality.[34] Black women of every economic and educational level suffer similar indignities as a matter of due course.

IV. A BRIEF REVIEW OF THE COMMERCE CLAUSE JURISPRUDENCE

The development of the principled standard for the exercise of judicial review in the Commerce Clause jurisprudence has been troubling. The vehicle for this expansion of federal power has been Article I, Section 8 of the Constitution, the Commerce Clause, which states: "The Congress shall have power...to regulate Commerce with foreign Nations, and among the several states, and with Indian Tribes."[35] The Commerce Clause allows federal regulation of hours that people work and the wages that they earn, as well as federal regulation of crime, violence, and racial discrimination.[36] Over the years, the Court has migrated through a series of tests in its application of federal regulatory power under the Commerce Clause. The Court has gone from "all that is commercial intercourse"[37] to "direct-indirect"[38] to "rational basis."[39] Finally, the current state of the law identifies the three types of activities that Congress can regulate under its Commerce Clause power.[40] Congress can regulate "the use of the channels of interstate commerce,"[41] Congress can legislate to "regulate and protect the instrumentalities of interstate

32. United States Census Bureau, *The Black Population in the United States:* March 1998; PPL-103 (1999).

33. Joint Center: Data Bank, *Educational Payoffs* <http://www.jointcenter.org/DB/factsheet/ payoff.htm> (accessed Dec. 29, 2003) (citing National Center for Educational Statistics, *Annual Earnings of Young Adults, by Educational Attainment, The Condition of Education 1997, Indicator* 33 <http://www.nces.ed.gov/nces/pubs/ce/c9733a01.html> (accessed Dec. 29, 2003).

34. *See e.g.* Eugene Cane, *Buckle up Message Comes with a Caveat*, Milwaukee Journal Sentinel 01B (November 6, 2003).

35. U.S. Const. art. I, § 8, cl. 3.

36. Charles B. Goodwin, *Constitutional Law: The Progeny of* United States v. Lopez *and the Future of Judicial Review of Federal Power Under the Commerce Clause*, 49 Okla. L. Rev. 159, 160 (Spring 1996).

37. *See Gibbons v. Ogden*, 22 U.S. 1, 69 (1824).

38. *See U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895) (the Court explained that the relationship between manufacturing and commerce was too indirect to allow federal regulation under the Commerce Clause).

39. *See Hodel v. Indiana*, 452 U.S. 314, 323-24 (1981) (the Court stated "a court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends").

40. *U.S. v. Lopez*, 514 U.S. 549, 558 (1995).

41. *Id.* at 558(citing *U.S. v. Darby*, 312 U.S. 100,114 (1941) and *Heart of Atlanta Motel, Inc. v. U.S.*, 379 U.S. 241, 256 (1964)).

commerce,"[42] and Congress can "regulate those activities having a substantial relation to interstate commerce."[43]

The early period of the Supreme Court consideration of the Commerce Clause power was an era in which federal regulatory power was expansive. One of the first landmark cases decided at this time was *Gibbons v. Ogden*, in which the Court broadly defined commerce as "every species of commercial intercourse."[44] More than a century after *Ogden*, during the New Deal Era, the Court applied a "direct-indirect" affects test, making distinctions between those activities which were commerce versus those that were not.[45] Few of the New Deal statutes survived the Supreme Court's interpretation of the Commerce Clause power.[46] After the New Deal Era emerged the "rational basis test" and a return to judicial deference to the legislature and an expansive federal regulatory power.[47] The Court no longer considered the "direct effect"[48] analysis, but instead adopted a "close and substantial relation to interstate commerce" approach.[49] From 1937 to 1995, the Commerce Clause was used as authority for a wide scope of federal regulations. The standard that controlled was "whether Congress had a rational basis for concluding that the activity sufficiently affected interstate commerce."[50] For the next 60 years, until 1995, the Commerce Clause had become the paramount source of the regulatory power of the federal government.

In 1995, the United States Supreme Court held in *United States v. Lopez* that the Gun-Free School Zones Act of 1990 was beyond the power of the federal government under the Commerce Clause.[51] In a five-to-four decision, the Court found the act, which made illegal the possession of firearms within 1000 feet of any school, to be an unconstitutional usurpation of power.[52] The act was found to have no connection to interstate travel, shipment, or manufacture.[53] This was the first time in almost 60 years that a federal law was declared unconstitutional as exceeding the scope of Congress' commerce power.

In 1992, a student of a Texas High School went to school carrying a concealed pistol and five bullets.[54] After being caught by school officials, the student was charged under the Texas law with possession of a firearm on school premises.[55] The state dismissed the charge and the student was charged with a federal crime,

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42. *Id.* (citing *Shreveport Rate Cases*, 243 U.S. 342 (1914), *Southern Ry. Co. v. U.S.*, 222 U.S. 20 (1911), and *Perez v. U.S.*, 402 U.S. 146, 150 (1971)).
43. *Id. at 558-59*(citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)).
44. 22 U.S. 1,193 (1824).
45. *U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895).
46. John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 4.7, 151-155 (5th ed., West Wadworth 1995).
47. *Hodel v. Virginia Surface Mining & Reclamation Assn.*, 452 U.S. 264, 277 (1981).
48. *See U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895).
49. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937).
50. *Hodel*, 452 U.S. at 277.
51. 514 U.S. 549, 551 (1995).
52. *Id.*
53. *Id.* at 557.
54. *Id.* at 551.
55. *Id.*

under the Gun-Free School Zones Act of 1990.[56] Lopez filed a motion to dismiss on the grounds that the federal statute was unconstitutional, as being beyond the federal government's power under the Commerce Clause.[57] The motion was dismissed, and Lopez was charged.[58]

The Court of Appeals held that the Act was beyond the power of Congress under the Commerce Clause, reasoning that the connection between gun possession in schools and interstate commerce was insufficient.[59] The conviction was reversed and the United States Supreme Court granted a writ of certiorari in 1994.[60] The opinion, delivered by Chief Justice Rehnquist, argued that although the last 60 years evidences an expansive interpretation of federal Commerce Clause power, "judicially enforceable outer limits" on Commerce power undoubtedly exist.[61]

Rehnquist and the majority articulated three categories of activities that are within the Commerce power.[62] Congress could regulate the use of the channels of interstate commerce.[63] This included regulation and use of interstate shipment in travel. Congress has the power to regulate and protect the instrumentalities of interstate commerce.[64] This includes the regulation of planes, trains and automobiles used for interstate transportation. Lastly, Congress has the power to regulate those activities which substantially effect interstate commerce.[65] The Court concluded that the Act did not fall under categories one or two, thus, to be a permissible federal regulation, the activity must have a *substantial effect* on interstate commerce.[66] The Court held that the activity proscribed within the Act had no substantial affect on interstate commerce, thus, it was an invalid exercise of Congress' commerce power.[67]

The majority reasoned in its holding that possession of a gun in a school zone was noncommercial in nature. The majority also found that *Lopez* did not fit into any pattern of cases in which the Court upheld regulation of intrastate *economic* activity that substantially affected interstate commerce.[68] The Court compared *Lopez* to *Wickard,* which it considered to be one of "the most far reaching example of Commerce Clause authority over intrastate activity," but at least contained a closer connection to economic activity than *Lopez.*[69] The Court distinguished the Gun-Free School Zones Act from statutes which at least attempt to limit the scope to those activities which have an explicit connection to interstate commerce.[70] The

56. *Id.*; 18 U.S.C. § 922(q)(2)(A) (1994).
57. *Id.*
58. *Lopez*, 514 U.S. at 552.
59. *Id.*
60. *Id.*
61. *Id.* at 566.
62. *Id.* at 558.
63. *Lopez*, 514 U.S. at 558.
64. *Id.*
65. *Id.* at 558-559.
66. *Id.* at 559 (emphasis added).
67. *Id.*
68. *Id.* at 567.
69. *Lopez*, 514 U.S. at 560.
70. *U.S. v. Bass*, 404 U.S. 336, 352 (1971).

majority viewed the Gun-Free School Zones Act as an attempt to regulate all gun possession in schools, with no jurisdictional limits, not just that gun possession which affects interstate commerce.[71]

The Court rejected the argument that the regulation was justified under the Commerce Clause power because possession of a gun near a school zone could result in a violent crime that could adversely affect the economy by imposing increased interstate costs.[72] The Court also rejected the argument that the national economy "would suffer from the deterioration in quality of education as a result of violent weapons in schools."[73] The Court returned to the notion that Article I limits Congress's legislative powers to those that are either express or implied in the Constitution, and any other finding would result in limitless federal power.[74]

Federal statutes regulating firearms have been challenged since *Lopez*, but to no avail. In each case, courts distinguished the firearms statutes from the Gun-Free School Zones Act by "noting the express jurisdictional requirement in each firearm statute that the firearm have some nexus to interstate commerce,"[75] a requirement lacking in Lopez in the Gun-Free School Zones Act.[76] Other Federal statutes have also been upheld as a proper exercise of federal Commerce Clause power, since the ruling in Lopez. These regulations include drug trafficking, the distribution of controlled substances in school zones, carjacking, money laundering, and RICO statutes, all found to be commercial or "economic activity" which substantially affects interstate commerce.[77]

A second area of diminished federal power as a result of *Lopez* is the federal government's regulation of non-criminal intrastate activities. In *United States v. Morrison*, decided in the year 2000, the Supreme Court relied heavily on *Lopez* in holding that gender motivated crimes of violence were not an economic activity that could be regulated under Congress' Commerce power.[78] The Court found that neither the activity regulated nor the setting in which the activity took place implicated interstate commerce.[79] In applying the categorical test set out in *Lopez,* the Court noted that the activity the Act sought to regulate did not fit into either of the first two categories.[80] The Court focused on the third category, which included those activities that, when aggregated, have a substantial effect on interstate commerce.[81] Holding that these activities include only "economic" activities, the Court concluded that violence against women is not an "economic" activity.[82]

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71. *Lopez*, 514 U.S. at 561.
72. *Id.* at 563.
73. *Id.*
74. *Id.*
75. *U.S. v. Monteleone*, 77 F.3d 1086 (8th Cir. 1996).
76. *Lopez*, 514 U.S. at 561.
77. *U.S. v. Varela-Cruz*, 66 F. Supp. 2d 274, 281-82 (1999).
78. 529 U.S. 598, 612 (2000).
79. *Id.* at 617.
80. *Id.* at 609.
81. *Id.*
82. *Id.* at 613.

The court reasoned that allowing such a regulation over a purely intrastate body of crime would be exceeding the scope of Congress' commerce power. The court found that this 'but for' casual chain from the initial occurrence of violent crime to a very attenuated effect upon interstate commerce, was impermissible. The Court felt it was impermissible because if allowed, Congress would be given the power under the Commerce Clause to regulate any crime whose nationwide aggregated impact has substantial effects on employment, production, transit, or consumption.[83] The court concluded that the Constitution requires a distinction between what is truly national and what is truly local, and suppression of violent crime and vindication of its victims is a police power left to the States.[84] Precedent has only upheld Commerce Clause regulation of intrastate activity where the activity was economic in nature. The Court ultimately rejected the argument that Congress could regulate non-economic, violent criminal conduct based solely on the conduct's aggregate effect on interstate commerce.[85]

The *Lopez* decision was based on the non-economic, criminal nature of the conduct at issue. The link between gun possession and a substantial effect on interstate commerce was attenuated. The court distinguished *Wickard* as being one of the most far reaching examples of Commerce Clause authority over intrastate activity, but it at least involved an economic activity in a way that the possession of a gun in a school zone did not. The possession of a gun in a school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect interstate commerce. *Lopez* did not alter the practical conception of commercial regulation. Congress could regulate in the commercial sphere on the assumption that there was a single market and a unified purpose to build a stable national economy. Unlike the earlier cases, neither the actors nor their conduct had a commercial character, and neither the purposes nor the design of the statute had an evident commercial nexus. The statute in *Lopez* made possession of a gun within 1000 feet of a school a criminal offense.[86] The statute in *Morrison* made gender motivated violence by an individual a crime that carried a civil remedy.[87] Any and all conduct could be viewed as having some commercial origin or consequence, but it doesn't follow that Congress' commerce power reaches that far. How do *Lopez* and *Morrison* affect the Courts ability to use the Commerce Clause to eliminate the vestiges of slavery?

V. THE COMMERCE CLAUSE REMAINS A VIABLE TOOL FOR ELIMINATING THE VESTIGES OF SLAVERY

The modern vestiges of slavery have an economic impact on interstate commerce. *Lopez* and *Morrison's* review of the Commerce Clause case law demon-

83. *Morrison*, 529 U.S. at 615.
84. *Id.* at 618.
85. *Id.*
86. *Lopez*, 514 U.S. at 551.
87. *Morrison*, 529 U.S. at 615.

strates that in those cases where federal legislation of intrastate activity has been sustained based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor. Every case where federal legislation has been sustained under the *Wickard's* aggregation principle, the regulated activity was of an apparent commercial character. *Morrision* is analogous to *Lopez* in that the conduct at issue was not economic in nature and so attenuated in its effect on interstate commerce that regulation by Congress under the Commerce Clause is unconstitutional.

In the wake of *Lopez* and *Morrison*, the Court seems to have established the above principle. For Congress to have the constitutional authority to regulate those areas that, when aggregated, have a substantial effect on interstate commerce, either the regulated activity or the setting in which it occurs must be "economic."[88]

A. The "Post-Hoc Reconfiguration"[89] of Commerce Clause Jurisprudence (Professor Tribe's interpretation of the effect of *Lopez* on future Commerce cases) (economic relationship v. cumulative economic impact)

"The real issue, then, was not so much the *degree* of impact Congress must show as the *character* of the impact, the *Nature of Congress' conclusions* about it, and the sort of *evidence* one must marshal in support of it."[90] Thus, Professor Tribe renders his opinion that the *Lopez* Court's emphasis on terminology was perhaps misleading insofar as the Court seemed to be less concerned than it seemed with the "quantum" effect of the regulated activity as implied by the substantial affects test. Instead, Professor Tribe postulates that "*Lopez's* discussion of the 'substantial effects' test reveals that, rather than focusing on `the quantity of the regulated activity's effects, the Court was attempting to reconfigure its precedent to focus more attention on the nature of the underlying activity — paying particular attention to whether or not that activity could itself be described as part of an economic enterprise."[91]

VI. MODERN EXAMPLES OF ECONOMIC IMPACT OF SLAVERY

A. Automobile Financing Example: Daimler-Chrysler case filed Feb. 2003

William Hooks, owner of The Hooks Law Firm in Chicago, is a fierce criminal civil rights attorney and a descendant of the legendary civil rights activist, Benjamin O. Hooks. On February 3, 2003 he filed a class action lawsuit "on behalf of a class of people of color nationwide who applied for loan financing from Chrysler in Illinois and Iowa and who were rejected despite their creditworthiness. The

88. *Lopez*, 514 U.S. at 567; *Morrison*, 529 at 612.
89. Tribe, *supra* n. 1, at 819.
90. *Id.*
91. *Id.* (emphasis in original)

members of the class received loan financing from other lending institutions, and subsequently purchased vehicles from Chrysler or another manufacturer at a higher rate of interest than should have been available through Chrysler."[92] Yes, Virginia, its official — even the police brutality civil rights crowd has turned their substantial attention to the inescapable problem of economic inequality. In the lawsuit, Attorney Hooks details the systematic use of racist and discriminatory practices at the highest levels of management within the Chrysler Financial Company. These details include specific descriptions of the company's use of credit scoring to determine the credit worthiness of applicants for in-house financing of automobile purchases at low published rates. He details, further, the company's deviation away from its accepted practices when the applicants are black, and how the company's senior executives not only tolerated, but openly perpetrated racially hostile attitudes, practices, and retaliation against employees and authorized dealers who attempted to treat black applicants fairly.[93] All of the named party members of the class are Black-American men and women who applied for Chrysler's advertised "zero percent financing for 20 months"[94] and who were required to seek financing elsewhere at higher rates of interest after being denied approval by Chrysler Financial despite the fact they each met Chrysler's standard for creditworthiness. According to the Hooks brief, beginning at paragraph 27:

> 27. Chrysler has a computer program called "ACE," which it uses to assess a customer's creditworthiness. **"ACE" stands for "Automated Credit Evaluation."** The ACE program is designed, in theory, to blindly assess a customer's objective financial condition and credit history and to "grade" customers accordingly. Customers are graded using a traditional letter scale of "A" to "F." It is Chrysler's policy and practice to buy dealership contracts and to provide automobile purchase financing ***at premium rates*** for customers for whom the ACE program has assigned grades of "B": or higher.
>
> 28. Around or before May 2001, Chrysler made it mandatory for every Chrysler dealership to use the ACE System for processing applications for customer financing toward the purchase of a Chrysler vehicle.
>
> 29. omitted
>
> 30. Customers are graded along a traditional letter scale from "A" to "F." The top-most score is "A++" or "Preferred." Chrys-

92. *See generally Coburn v. Daimlerchrysler Servs. N. Am. L.L.C.*, 218 F.R.D. 607 (N.D. Ill. Oct. 27, 2003).

93. *See generally* Br. of Pl. *Coburn v. Daimlerchrysler Servs. N. Am. L.L.C.*, 218 F.R.D. 607 (N.D. Ill. 2003) [hereinafter Hooks Brief].

94. Typical Chrysler advertisement since at least September 11, 2001.

ler's policy and practice is to provide vehicle purchase financing to customers for whom the ACE System has assigned a grade of "B" or higher.

31. Applications marked with a "B" or higher are automatically approved for financing by Chrysler's ACE System. The whole process is automated. The North America Headquarters of Chrysler outside Detroit directly communicates approval for applications marked "B" or higher to the local dealership from which the application was submitted.

32. omitted

33. omitted

34. omitted

35. Those customers who are not approved for financing and whose contracts are not bought by Chrysler typically attempt to receive financing for their automobile purchases through commercial banks and other lending institutions and typically end up paying higher interest rates than are generally available through the manufacturer. Other customers who are not approved for financing by Chrysler end up either not buying a vehicle at all or end up going to different dealerships or manufacturers for their vehicle purchases. This is particularly true for customers seeking to take advantage of special, low-rate, factory-incentive financing offered by Chrysler.

36. Despite clear guidance from the ACE System and the 'CGC—Market Value Pricing' chart, Chrysler regularly and consistently rejects customers in African-American neighborhoods...who apply for financing at a 'special rate,' ... because Chrysler's racist practices and policies are to 'redline' and reject such applications...

B. Chrysler Subjects People of Color to Extra Scrutiny Through an Unlawful Practice of 'Redlining' that Exposes Them to Subjective Criteria and Racist Discrimination.

43. Upon information and belief, Chrysler turned on the 'disabling switch' in its ACE System for application from the Marquette Chrysler Jeep Dealership ...located in a Chicago neighborhood

where approximately 90 percent of the residents are African-American. Chrysler has unlawfully 'redlined' customers at the Marquette Dealership since at least April 2001.

44. omitted

45. omitted

46. omitted

47. Customers rejected by Chrysler for loan financing often seek financing from commercial banks, or other lending institutions, where they often pay higher interest rates to finance the purchase of one of Chrysler's vehicles. This is particularly true during the class period ... as Chrysler was offering low or zero percent financing.[95]

B. Mortgage Lending Example

Before and since the passage of the *Fair Housing Act* and other regulatory attempts to end or curtail it, racism and discriminatory practices have often prevented Black-Americans from obtaining land ownership.[96] "Thus, contrary to the expectations generated by the *Homestead Act*, the majority of Blacks did not become land owners."[97] Without the opportunity and/or the wherewithal to acquire ownership of land in significant numbers – one of the most important steps in the acquisition of wealth – Blacks missed this all-important step in the wealth accumulation process and "were overwhelmingly forced into poverty."[98]

When given the rare opportunity to participate in land purchases, discrimination by realtors and lenders perpetuated segregation with the use of racist policies and procedures. Black-Americans were disadvantaged through dishonest lending practices, which often resulted in foreclosure. Banks and lenders exploited Black borrowers by charging high interest rates, and that's only if Black-Americans were even allowed the same borrowing advantages as their White counterparts.[99]

Discrimination also often resulted in Black-Americans being denied access to those programs, such as the FHA — which was a mortgage system that allowed families to purchase homes with small down payments, low interest rates and ex-

95. Hooks Brief, *supra* n. 93 at 6-10.

96. *See generally* the work of the six MCAP studies conducted by the regional offices of the Federal Reserve System and, especially, the Chicago MCAP of which I served as a member of the Steering Committee; and the rise of the use of credit scoring and predatory lending; *see* the many Justice Department settlement agreements, which though they resulted in no admissions of guilt, resulted in findings of fact that firmly established patterns of discrimination and discriminatory practices by lenders, advertisers, etc.

97. Hernandes-Truyol, *supra* n. 2, at 1217.

98. *Id.*

99. *Id.* at 1220.

tended repayment periods.[100] This was accomplished by using discriminatory rating systems, racially restrictive covenants, and subdivision regulations.[101] Redlining was widely used to deny Black-Americans access to suburban areas and forced them to remain in the inner-cities.[102]

Race-based discrimination as practiced against Black-Americans in the mortgage lending process is used as a means of achieving a classist objective: limiting access to the wealth, power, status, and access that land ownership confers by limiting access to land to the privileged classes.[103] Similar to feudalism, mortgage lending is simply a modern land distribution mechanism, designed to limit access to land ownership.

C. Banking Services Example: Delaware studies Parallel Banking:

> When regulated banks redline neighborhoods by making it difficult for residents to cash their check, they are forced to go to a check casher. The check casher charges a very high fee and the bank really ends up honoring the very same check eventually, because the check casher ends up presenting the same check to a regulated bank. So what's the use of using the middle-man, the check casher other than to allow them to profit off of poverty.[104]

Predatory Lending: Predatory loans are difficult to define, but typically, they are high rate loans loaded with up-front fees and with oppressive terms like balloon payments and prepayment penalties. These loans are frequently "flipped," that is, refinanced for the primary purpose of collecting more fees. "Packing" loans with high cost extras like prepaid credit insurance is another common predatory practice. Home equity – the only source of wealth available to many people – and even shelter are stripped away and borrowers are saddled with excessive debt they cannot afford.[105]

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100. *Id.* at 1221.

101. Hernandes-Truyol, *supra* n. 2, at 1221-22 (a practice that lasted until 1948 when the U.S. Court outlawed the use of racially restrictive covenants in *Shelly v. Kraemer*, 334 U.S. 1 (1948)).

102. *Id.* at 1222; *Blacks Law Dictionary*, 1283 (7th ed., West 1999) (redlining defined as "credit discrimination by a financial institution that refuses to make loans on properties in allegedly bad neighborhoods").

103. Reynolds Farley & William H. Frey, *Changes in the Segregation of Whites From African-Americans in the 1980's: Small Steps Toward a More Integrated Society*, 59 Am. Soc. Rev. 23, 24 (1994).

104. Telephone Interview with Rashmi Rangan, Exec. Dir., Delaware Community Reinvestment Action Council, Inc. (DCRAC)(Feb. 8, 2003).

105. Celeste M. Hammond, *Predatory Lending – A Perspective for the Mortgage Attorney*, 46 Ill. Bar J. 2 (Nov. 2000).

D. Property Appraisals Example: Chicago MCAP report Chicago—Appraisal Process Task Group

One of the most important wealth-growing benefits of owning property is that it allows individuals to acquire additional property and other assets through leverage and sale of the asset. One's ability to sell or to borrow against an existing asset, however, will always involve one common variable: its market value. The market value of the asset will usually be determined by an appraisal of the asset by a professional appraiser. The higher the appraised value, the higher the sale price and the amount the owner can borrow. The lower the appraised value, the lower the sale price and the amount the owner can borrow. It's very simple. The importance of access to fair appraisals cannot be overstated. Without a fair appraisal, one cannot use assets that one already owns to the fullest ordinary advantage. In fact, individuals are denied access to their own wealth whenever their property is undervalued during an appraisal. The consequence is that they are poorer. The extent to which Black-Americans are the victims of unfairly low evaluations of their property, due to unfair appraisals, is a difficult thing to measure because appraisals of properties not sold or transferred are not recorded in public records. In 1996, the Federal Reserve Bank of Chicago's three-year-long Mortgage Credit Access Partnership (MCAP) organized a task force[106] to look into the problem of unfair appraisals.[107] The organizers included this topic among the very few that it chose to focus upon for many reasons.[108] Primarily, the task group was created because MCAP determined that "[a]n accurate and unbiased estimate of value is essential to evaluating collateral for mortgage and that lenders, borrowers, mortgage insurance companies and others depend upon the objective valuation of this property."[109] The decisions whether to grant or deny loans are based upon the appraised value, so the appraisers are central to the home buying process. [110]

VII. CONCLUSION

My proposal may be viewed as a repackaged request for reparations. It is not. I did not set out to find a substitute remedy for the economic harm that the proponents of reparations have frequently and bravely articulated.[111] While the new regulation I propose may provide an alternative, there is nothing in it that would

106. The formation of the Appraisal Process Task group whose members include representatives of lending institutions, real estate associations, fair housing groups, government agencies and appraisal agencies.

107. *The Mortgage Credit Access Partnership: A New Initiative for Chicago* <http://www.chicagofed.org/publications/profitwise/1997/pwwin97_4.pdf> (accessed Dec. 29, 2003).

108. *Mortgage Credit Access Partnership: Partnership Report* <http://www.chicagofed.org/publications/mcap/mcap.pdf> (accessed Dec. 29, 2003).

109. *Id.* at 1.

110. *Id.*

111. *See e.g. Bridging the Color Line: The Power of African-American Reparations to Redirect America's Future*, 115 Harv. L. Rev. 1689 (2002); Irma Jacqueline Ozer, *Reparations for African Americans*, 41 How L.J. 479 (Spring 1998);Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 Tul. L. Rev. 597 (1993).

prevent it from co-existing with the reparations remedy. I would fully expect that the proponents of the reparations remedy would also support a new federal statute that would prevent future economic discrimination and inequality. There are impediments to the reparations remedy that I believe will not plague my proposal.[112]

Article 1, Section 8, Clause 3 of the United States Constitution authorizes Congress "to regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes."[113] "In *Gibbons v. Ogden*, Chief Justice John Marshall examined the scope of both federal and state powers under the Commerce Clause. The opinion, today, ranks as one of the most important in history. In it Marshall laid the basis for later Justices to uphold a federal power to deal with national and social problems."[114]

> In the course of the opinion, Marshall gave a broad reading to the powers of Congress under the commerce clause. Marshall defined commerce as 'intercourse' and recognized that it extended into each state. Congress had the power to regulate 'that commerce which concerns more states than one.' The federal power extended to commerce whenever it was present, and thus, 'the power of Congress may be exercised within a state.[115]

In what may very likely have been the first use of the term "police power" to describe the nature of regulatory authority that was wholly within the purview of individual states, Justice Marshall in *Gibbons* identified a very limited area of commercial activities that are entirely "internal" to a state and outside of the scope of Congress' power under the Commerce clause.[116] "Marshall thus described the 'internal commerce of a state' as beyond the reach of federal power but simultaneously created a standard under which few commercial activities could be found to meet the definition of internal commerce."[117]

In *Gibbons*, Chief Justice Marshall asked of the power of Congress regarding commerce between and among the states: "What is this power?"[118]

> It is the power to regulate; that is to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution, ... the power over commerce ... among the sev-

112. Hopkins, *supra* n. 10, at 2542 (discussing some of the "critical roadblocks that will have to be overcome before Congress can even consider granting reparations to blacks").
113. U.S. Const. art I, § 8, cl. 3; Nowak, *supra* n. 46, at 160.
114. *Id.*
115. *Id.* at 161 (citing *Gibbons*, 22 U.S. 1, 189, 194 (1824)).
116. *Gibbons*, 22 U.S. at 194.
117. Nowak, *supra* n. 46, at 161.
118. *Gibbons*, 22 U.S. at 196.

> eral States, is vested in Congress as absolutely as it would be in a single government ...[119]

We're talking about the lower rates at which Black-Americans earn high income; the lower rates at which Black-Americans complete high levels of education; the lower rate at which Black-Americans have access to venture capital for starting businesses; the lower rates at which they are able to get insurance in a fair manner or fair appraisals for property that is important to use as leverage for building wealth or the rate at which they are paid fair wages, the rate at which they are able to access banking services all of which are clearly directly related to interstate commerce which would not pose the problem that *Lopez* warned future seekers of protection under the Commerce Clause against to the extent that there is no attenuation problem post *Lopez* we can still use the Commerce Clause to continue to try to protect rights of Black-Americans, extend additional protection to Black-Americans in pursuit of our work that we began with the protection of basic fundamental rights in order to try to complete the job we are undertaking which is to ensure full integration into American life. We must remove the commerce from inequality.

It is essentially in the withholding of opportunities to achieve true wealth that the descendants of former slaves continue to be denied full access into American life. Given what we know is true about American life, which is that we are a society that values commercial enterprise and tends to conduct commercial enterprises on a very informal basis that benefit people who are well connected and already in a position to access those relationships, while penalizing people who are not. It penalizes people who are outside of the system, who don't already have a certain amount of wealth, who don't have levels of sophistication that allow them to demand access if that's what it took.

I am recommending that Congress pass a new economic equality civil rights law that attempts to tackle this problem that we have sufficient evidence of, and look for solutions that again aren't forthcoming on a voluntary basis by private parties. The ability to articulate how some of these areas of economic life can be protected will be easier for some than it will be for others. You know we're talking about a lot of different activities and a lot of different relationships — some of which are very subtle, some of which are already regulated that would fall under the larger umbrella of economic interests and economic rights that are in our sights or more to the point that are under the larger umbrella of those kinds of interests that one needs to have access to if one is going to fully participate in American life. But the fact that some of them are more easily covered than perhaps others need not necessarily be a reason why we should limit the list now. While it can be acknowledged that some of these problem areas will be easier than others to address through enforcement mechanisms, and/or easier to influence than others, the objective now is to try to create a longer, not shorter, list of areas to target. It is impor-

119. *Id.* at 196-97.

tant to develop a new paradigm, based on a general thesis that rejects the old paradigm of the unquestioned presence of economic disparity due to inequality between the races in America.

Suggested Reading List

Woodstock Institute Articles in Journals, Magazines, and Books

2003

"Research, Advocacy and Community Reinvestment" by Bush, Malcolm with Immergluck, Daniel in *Organizing Access to Capital: Advocacy and the Democratization of Financial Institutions.* Gregory D. Squires, ed.

"The Impact of Global Political and Economic Transformations on the Lives of Children," by Bush, Malcolm, with Kaufman, Natalie, Rizzini, Irene and Wilson, Kathleen in *Globalization and Children.* Natalie Kaufman and Irece Rizzini, eds. Lexington Books.

2002

"Redlining Redux: Black Neighborhoods, Black-Owned Firms, and the Regulatory Cold Shoulder," *Urban Affairs Review.* Immergluck, Daniel.

2001

The Impact of Changes in the Financial Services Industry on Small Business Lending in Central Cities and Modest-Income Suburbs. Brookings Institution Center on Urban and Metrolpolitan Policy (www.brookings.edu). Immergluck, Daniel and Smith, Geoff.

"Book review of *Development as Freedom*, Armatya Sen, Alfred A. Knopf, 1999," *Social Service Review* 75:3, September 2001. Bush, Malcolm.

"The Financial Services Sector and Cities: Restructuring, Decentralization, and Declining Urban Employment, " *Economic Development Quarterly.* August 2001: Immergluck, Daniel.

Regulating Micro-finance: A Global Perspective. New Economics Foundation: London. 2001. Bush, Malcolm, with Fisher, Thomas and Guene, Christopher.

"Deregulation, Segmentation, and Exclusion in the Financial Services Sector: The Effects on the Low-Income Side of the Economy," by Immergluck, Daniel in *Banks and Social Cohesion: Alternative Responses to a Global Market."* Ed Mayo, Danyal Sattar, and Christopher Guene, eds. Jon Carpenter Publishing, UK.

2000

"Community-Bank Partnerships: The Chicago CRA Coalition and Bank One Forge the Alternative Banking Program," *Office of Comptroller of the Currency's Community Developments*, Fall 2000: Williams, Marva.

"Learning the Ropes: Financial Literacy Programs Help Low-Income Families," *Shelterforce,* July/August 2000: Jacob, Katy.

"Financial Modernization Law Ignores the Underserved," *The NeighborWorks Journal,* Winter 2000: Bush, Malcolm.

"The Road not Taken: The Interests of Lower-Income Families Ignored in Financial Modernization," *The Region: Newsletter of the Federal Reserve Bank of Minneapolis,* March, 2000: Bush, Malcolm.

"Financial Modernization Law Ignores the Underserved," *NFC Notables,* 2000: Bush, Malcolm, and Jacob, Katy.

"Deregulation, Segmentation, and Exclusion in the Financial Services Sector: The Effects on the Low-Income Side of the Economy," *Banks and Social Cohesion*, ed. By Ed Mayo, Danyal Sattar, and Christopher Guene, Brussels: International Association of Investors in the Social Economy, in press, (2000): Immergluck, Daniel

1999

Cities and Finance Jobs: The Effects of Financial Services Restructuring on the Location of Employment. Brookings Institution Center on Urban and Metropolitan Policy (www.brookings.edu). Immergluck, Daniel.

"Financial Modernization Law Leaves Needy Communities Behind," *Illinois Welfare News,* December 1999: Jacob, Katy.

"The Community Reinvestment Act and Community Development Financial Institutions: Qualified Investments, Community Development Lending, and Lessons from the New CRA Performance Evaluations," *Profitwise* Volume 9 Issue 1 / Winter, (1999): Immergluck, Daniel.

"Financial 'Progress' Leaves Communities Behind," *Shelterforce,* Nov-Dec 1999: Bush, Malcolm and Jacob, Katy.

"Financial Modernization & Low-Income People." Neighborhood Funders Group Public Policy Paper, Fall, (1999). Bush, Malcolm.

"Small Business Financing and the Community Reinvestment Act," *The Business Times,* Vol. 20, Summer 2000: Immergluck, Daniel and Wysocki, Ted (Chicago Association of Neighborhood Development Organizations).

"Intrametropolitan Patterns of Small Business Lending: What Do the New Community Reinvestment Act Data Reveal?" *Urban Affairs Review* 34, (1999): 787-804. Immergluck, Daniel.

"Neighborhoods, Race, and Capital: The Effect of Residential Change on Commercial Investment Patterns," *Urban Affairs Review* 34, (1999): 397-411. Immergluck, Daniel.

1998

Neighborhood Jobs, Race and Skills: Urban Unemployment and Communities. New York, NY: Garland Press, 1998: Immergluck, Daniel.

"Progress Confined: Increases in Black Home Buying and the Persistence of Residential Segregation," *Journal of Urban Affairs* 20, (1998): 443-457. Immergluck, Daniel

"A Reply to Houston's Comments on Job Proximity and the Urban Employment Problem: Do Suitable Jobs Improve Neighborhood Employment Rates?" *Urban Studies*, 35, (1998): 2359-2368. Immergluck, Daniel

"The Intrametropolitan Distribution of Economic Development Financing: An Analysis of SBA 504 Lending Patterns," *Economic Development Quarterly* 12, (1998): 372-384. Immergluck, Daniel and Mullen, Erin

"Remember, Giants Also Can Fail," *Chicago Tribune,* April 12, 1998: Bush, Malcolm.

"Neighborhood Economic Development and Local Working: The Effect of Nearby Jobs on Where Residents Work," *Economic Geography* 74, (1998): 170-187. Immergluck, Daniel

"Job Proximity and the Urban Employment Problem: Do Suitable Jobs Improve Nieghborhood Employment Rates?" *Urban Studies* 35, (1998): 7-23. Immergluck, Daniel

1997

"A Review of What Employers Want: Job Prospects for Less-Educated Workers," by Harry Holzer. *Review of Black Political Economy* 24, (1997): 135-143. Immergluck, Daniel

1996

"Targeted Small Business Lending Alternative Approaches and Best Practices in Urban Markets," *Economic Development Commentary* 20, (1996): Immergluck, Daniel and Weinstein, Samantha

"The SBA should stop trying to stimulate the economy as a whole. Its only real leverage is in lower-income communities," Inc. Magazine, (1996): Immergluck, Daniel

1995

"Banking on Your Community," *Coop America Quarterly*, (1995): Tholin, Kathryn

1994

"Community Investment Works for Banks," *The Network Builder*, (1994): Tholin, Kathryn

"New CRA Regulations Champion Objective Measures," *The Network Builder*, (1994): Bush, Malcolm and Adams, Charlie

"State Governments and CDFI's: Using Public Deposits to Strengthen Community Development Lending Institutions," (1994): Tholin, Kathryn

1993

"The Role of Public Infrastructure in Urban Economic Development," *Economic Development Quarterly* 7, (1993): 310-318. Immergluck, Daniel

"Community Development Financial Institutions: Key Tools for Rebuilding Communities," (1993): Tholin, Kathryn

"Race and Neighborhood Lending Patterns: Analyzing the New HMDA Data," *The Chicago Affordable Housing Fact Book: Visions for Change*, (1993): Jackson, Ernestine

1991

"Public Deposits Leverage Development," *Trends and Topics,* (1991): Flax-Hatch, David, and Tholin, Kathryn

"The Invisible Lenders: The Role of Residential Credit in Community Economies," *Challenging Uneven Development and Urban Agenda for 1990s*,(1991): Pogge, Jean and Flax-Hatch, David

1990

"Concentric Circles: A Framework for Community Reinvestment," *Trends and Topics*, Spring/Summer, (1990): Choca, Maria

"Reinvest Insurance Dollars in Communities Where Profits are Made," *Neighborhood Works*, (1990): Choca, Maria

"The Silent Partner: The Insurance Industry Potential for Community Reinvestment," *Social Policy*, (1990): Choca, Maria, and Hoyt, Josh

Additional Woodstock publications

The Cleveland Residential Housing and Mortgage Credit Project: One City's Response to the Problem of Racial Discrimination in the Home-Buying Process. *Bush, Malcolm and Corrigan-Halpern, Paula. 1995. 29pp.*

Community Lending Agreement between Chicago Community Organizations and First Chicago NBD. *1995.*

Census Tract by Lender Summaries of 1993 Home Mortgage Disclosure Act Data for the Gary Primary Metropolitan Statistical Area (PMSA).*Immergluck, Daniel. 1995. 57pp.*

Community Lending Profiles of Independence Bank of Chicago, Drexel National Bank, and South Shore Bank of Chicago. *Healey, Jennifer. 1993. 21pp.*

Financial Services in the Pilsen Community. *Adams, Charles. 1993. 28 pp.*

Addressing the Capital and Credit Needs of Local Congregations in Chicago (A Report for Inspired Partnerships) *Flax-Hatch, David and Pogge, Jean. 1991. 55 pp.*

The Long Term Future of Resources for Chicago's Community Development Corporations: A Report to The John D. and Catherine T. MacArthur Foundation. *Pogge, Jean and Choca, Maria. 1991. 48 pp.*

People Helping People: How State Leagues and Their Members Can Support Community Development Credit Unions. *Tholin, Kathryn. 1995. 10pp.*

Investing In Sustainable Manufacturing: A Study of The Credit Needs of Chicago's Metal Finishing Industry. *Basler, Stephen; Hellwig, Maureen; and Tholin, Kathryn. 1990. 41pp.*

The Illinois Affordable Housing Trust Fund: A Working Proposal of the Statewide Action Coalition. *Revere, Elspeth. 1988. 18pp.*

The Bankers of Today, The Banks of Tomorrow: The Financial Services Industry and its Role in Community Reinvestment. *Pogge, Jean and Flax-Hatch, David. 1987. 64pp.*

An Analysis of Black Participation in the City of Chicago C.H.A.M.P. I Mortgage Bond Program. *Kelly, Donald C. and Choca, Maria T. 1986. 40 pp.*

Women's Self-Employment Project Loan Fund. *Pogge, Jean. 1986. 5pp.*

From Obstacle to Opportunity: An Evaluation of the Multifamily Tax Reactivation Program. *Pogge, Jean. 1985. 80pp.*